CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC.,
PETITIONERS,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL.,
PETITIONERS,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1946.

CERTIORARI GRANTED OCTOBER 21, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 470

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC., PETITIONERS,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL., PETITIONERS,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Original	Print
Record from D. C. U. S., Northern District of Illinois	1	1
Placita (omitted in printing)	1	
Complaint	2	1
Exhibit "A"—Complaint—Rice v. Chicago Grain Corp., before Illinois Commerce Commission	16	13
Exhibit "B"—Respondents motion to dismiss complaint	25	22
Exhibit "C"—Notice of denial of motion to dismiss, etc.	27	24
Notice of motion	29	25
Motion for preliminary injunction	31	26

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 6, 1947.

8345

	Original	Print
Record from D. C. U. S., Northern District of Illinois—Continued		
Appearance for Defendants Illinois Commerce Commission, et al.	34	29
Appearance for Defendants Rice, et al.	35	29
Answer of I. C. C., et al., to motion for injunction	36	30
Motion of I. C. C., et al., to strike complaint, etc.	40	34
Answer of Defendants Rice, et al.	43	36
Motion to amend complaint, etc.	49	42
Order re: Amendment to complaint, etc.	51	43
Amendment to complaint	52	53
Motion re: Affidavits in support of motion for injunction	57	47
Order re: Affidavits, etc.	58	48
Affidavits in support of motion for injunction	59	48
Affidavit of Wallace Templeton	60	49
Exhibit "A"—Warehouse receipt	63	50
Affidavit of William Enke, Jr.	65	51
Affidavit of D. H. Lipsey	66	52
Affidavit of R. A. Gerstenberg	68	54
Affidavit of Simon Mayer	69	56
Affidavit of M. R. Glaser	72	58
Affidavit of Joseph E. Bailey	73	60
Affidavit of Joseph F. Gubbins	76	63
Exhibit 1—Petition, In Re: Cargill, before I. C. C.	77	64
Exhibit 2—Order on petition by I. C. C.	83	70
Affidavit of Carl A. Sorling	87	74
Memorandum opinion, Igoe, J.	88	75
Judgment	91	78
Notice of appeal	93	80
Statement of points on appeal	95	81
Bond on appeal (omitted in printing)	98	
Stipulation as to record	99	83
Clerk's certificate (omitted in printing)	102	
Order re: printing record	102	85
Clerk's certificate (omitted in printing)	103	
Proceedings in U. S. C. C. A., Seventh Circuit	105	86
Placita (omitted in printing)	105	
Order taking cause under advisement	105	86
Opinion by Major, C. J.	106	87
Judgment	126	107
Designation of record	127	108
Designation of record	129	109
Order staying mandates	131	110
Clerk's certificate (omitted in printing)	133	
Orders allowing certiorari	134	111

[fol. 1] [Placita omitted]

[fol. 2] No. 44-C-1257

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

GREAT LAKES ELEVATOR CORPORATION, SANTA FE ELEVATOR CORPORATION, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., Plaintiffs,

vs.

ILLINOIS COMMERCE COMMISSION and Its Chairman, JOHN D. BIGGS, and William Farrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, and Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Co., a partnership, and George F. Barrett, Attorney General of Illiois, Defendants

COMPLAINT—Filed October 20, 1944

[fol. 3] To the Honorable Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., bring this action against the Illinois Commerce Commission and John D. Biggs, its Chairman, and against William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, (hereinafter sometimes referred to collectively as the Commission), and Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co. and George F. Barrett, Attorney General of Illinois (all of the foregoing, except the Plaintiffs, being hereinafter sometimes referred to collectively as Defendants) for the purpose of enjoining the defendants composing said partnership of Daniel F. Rice & Co. from further prosecuting

the proceedings before the said Commission entitled Daniel F. Rice & Co. *vs.* Chicago Grain Corporation, et al., Docket 32267, and of enjoining the Commission from entertaining further jurisdiction of said matter, and of enjoining George F. Barrett, Attorney General of the State of Illinois, from instituting any proceedings against the plaintiffs, or any of them, to enforce any order of the Commission in said proceedings, and from prosecuting these plaintiffs, or any of them, under any law of Illinois relating to public grain warehousemen.

I

The jurisdiction of this Court over this action is invoked under Section 24, subdivision 1, of the Judicial Code of the United States, as amended, (Section 41 (1) of Title 28 of U. S. C. as amended). The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00 and arises under the constitution and laws of the United States, and particularly under:

[fol. 4] (a) Article I, Section 8, Clause 3, of the Constitution of the United States;

(b) United States Warehouse Act (7 U. S. C., Section 241, *et seq.*);

(c) Commodity Exchange Administration Act (7 U. S. C. Section 1 *et seq.*), and

(d) Official regulations duly promulgated under said two designated acts.

The value of the right of plaintiff, derived from the Federal law, to conduct their business free from regulation and interference by the Commission and to store their own grain in public warehouses operated by them and the cost of defending the proceedings before said Commission, generally described in the introductory paragraph hereof, would in the instance of each plaintiff, exceed the sum or value of $3,000.00 exclusive of interest and costs.

II

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, and Rosenbaum Bros. are all Illinois corporations, and Stratton Grain Company, Continental Grain Company, and Cargill, Inc. are Dela-

ware corporations. Each of said corporations is duly licensed to do business in the State of Illinois, and each has a place of business in the City of Chicago, County of Cook, and State of Illinois, within this District and Division.

III

Each of said plaintiffs is engaged in the business of the public storage of grain for hire for interstate commerce within this District and Division, under a license duly issued by the Secretary of Agriculture of the United States, pursuant to an Act of the Congress of the United States commonly known as the United States Warehouse Act (7 U. S. C., Section 241, *et seq.*) and under a schedule of rates, charges, and practices duly filed with said Secretary of Agriculture, as required by law. As the holder of such license, each of said Plaintiffs is subject to said United States Warehouse Act and the rules and regulations duly promulgated thereunder.

Each of said plaintiffs, except Great Lakes Elevator Corporation, deals in grain, both on its own account and as [fol. 5] agent for others. The approximate dates upon which each of said Plaintiffs secured its grain warehouseman's license from the Secretary of Agriculture, and initially filed its schedule of rates, charges, and practices with the Secretary of Agriculture, are set forth below:

Warehouse Co.	Date
Great Lakes Elevator Corporation	September 28, 1942
Santa Fe Elevator Corporation	August 1, 1939
Norris Grain Company	January 24, 1939
Stratton Grain Company	September 16, 1940
Continental Grain Company	February 28, 1938
Rosenbaum Bros.	July 1, 1937
Cargill, Inc.	July 1, 1937

IV

Defendant, Illinois Commerce Commission, is an administrative body existing under and by virtue of an act of the State of Illinois entitled "An Act Concerning Public Utilities Approved June 29, 1921, as amended" (Illinois Revised Statutes 1943, Chapter 111⅔, Section 1, et seq.), and is specifically charged with the administration and enforcement of said act in the regulation of certain public

utilities therein defined, including public grain warehouses, in some of their operations within the State of Illinois. Said Commission has one office in the City of Springfield, County of Sangamon, and State of Illinois, in the Southern District of this State, and another in the City of Chicago, County of Cook, in said State, in this District and Division. All the said members of said Commission are citizens and residents of the State of Illinois, and three members thereof, William Parillo, Frank Peska and Val. J. Washington are citizens and residents of this District and Division.

Defendant George F. Barrett is the duly elected and acting Attorney General of the State of Illinois and the legal adviser to all State Officers Boards & Commissions including Illinois Commerce Commission.

Defendants Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Co., are dealers in grain, with their residences and principal place of business in the City of Chicago, County of Cook, and State of Illinois, within this District and Division.

[fol. 6] V

The grain market at Chicago, Illinois, is, and for many years last past has been, the world's largest market. For the year ended December 31, 1943 approximately 2,000,000,000 bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trading in grain futures contracts in the United States is done at the said market on the said Board of Trade, a corporation which has been designated a contract market by the Secretary of Agriculture under the Commodity Exchange Act. Under that Act futures contracts on said Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the United States Warehouse Act. The warehouse receipts issued by plaintiffs are issued under, and comply in all respects with, the United States Warehouse Act and are in general use upon the said Board of Trade in the satisfaction of futures

contracts on that interstate market and as such are instruments of interstate commerce.

VI

On or about July 28, 1944, defendants Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley caused to be filed before the Commission their complaint against the Plaintiffs, and other-, charging numerous violations of the Illinois Public Utility Act in so far as it was alleged to apply to warehousemen engaged in the State of Illinois in the public storage of grain for hire. A copy of said complaint is annexed hereto as Exhibit "a" and, by this reference, made a part of this complaint. In and by Paragraph 13 of said complaint it is charged that all or some of the warehousemen defendants named in the said complaint have violated the laws of the State of Illinois in the particulars therein specified.

[fol. 7]

VII

On or about August 30, 1944, plaintiffs filed with the Commission, their joint motion to dismiss (a) said complaint in its entirety; or (b) in the alternative, each of the separate charging paragraphs of the complaint, upon the grounds that the subject matter of said complaint is beyond the jurisdiction of the Commission, and is exclusively within the jurisdiction of the Government of the United States by reason of Paragraph 3, Section 8 of Article I of the Constitution of the United States, and of the Act of Congress, commonly known as the United States Warehouse Act (7 U. S. C. Section 241, *et seq.*), and the Act of Congress commonly known as the Commodity Exchange Administration Act (7 U. S. C. Section 1, *et. seq.*), and of the Official Regulations duly promulgated thereunder. A copy of said motion is annexed hereto as Exhibit "b" and, by this reference, made a part of this complaint.

Briefs were submitted in support of said motion and oral argument had before the Commission on September 26 and 27, 1944.

VIII

Thereafter, on October 10, 1944, the Commission entered its order denying all motions of plaintiffs to dismiss and set the cause for hearing before it on October 24, 1944.

A copy of said order is annexed hereto as Exhibit "C" and, by this reference, made a part of this complaint.

IX

The said Commission, in overruling plaintiffs' motion to dismiss the complaint, Exhibit "A" hereto annexed and by setting said complaint for hearing before it, has illegally usurped jurisdiction to regulate public grain warehouses operated by the plaintiffs herein, which hold licenses issued by the government of the United States, and which by the statutes of the United States and the rules and regulations duly promulgated thereunder are subject solely to regulation by the Government of the United States and not, to any extent, by the State of Illinois, or by any agency of said State, in the particulars sought to be encompassed by, and complained of, in the complaint before [fol. 8] said Commission annexed hereto as Exhibit "A".

The government of the United States has preempted and occupied the field of regulation over public grain warehouses operating under licenses issued by it, to the exclusion of any similar regulation by the State of Illinois respecting such grain warehouses.

The attempted regulation of public grain warehouses by the said Commission is beyond the jurisdiction of the State of Illinois and of the Illinois Commerce Commission, or of any other agency of said State for the reasons assigned in Article VII of said complaint.

X

Under the Constitution of the State of Illinois, as construed by the Supreme Court of that State, it is illegal for a public warehouseman to store his own grain in a public warehouse operated by him, whereas under the United States Warehouse Act, and the regulations thereunder, such transactions are entirely legal. Each of the plaintiffs, except Great Lakes Elevator Corporation, does business as an owner and merchandiser of grain and regularly stores, for interstate commerce, grain owned by it as well as that of others in its warehouse or warehouses. The right to store its own grain in a publicly operated warehouse, as permitted by the United States Warehouse Act and regulations thereunder, is property of great value to each of said plaintiffs in its general business opera-

tions; the assumption of jurisdiction by the Commission, under the complaint annexed hereto as Exhibit "A", threatens to destroy that right. The value of the right to conduct their business free from the interference by the Commission and the value of said right to store their own grain in their own warehouses, is difficult, if not impossible, of determintion, and the deprivation of such right would cause said plaintiffs irreparable injury and damage.

XI

Plaintiffs, in the conduct of their general business, except Great Lakes Elevator Corporation, issued to themselves negotiable warehouse receipts for grain in form prescribed by the United States Warehouse Act, and approved [fol. 9] by the Secretary of Agriculture, representing such portion of the grain in their own public warehouses as may be owned by them, and use such receipts not only for the purpose of tranferring title to such grain in sales to others, but also as collateral for commercial loans made from banks, and that in the aggregate the value of such negotiable warehouse receipts so used by plaintiffs is many million dollars per year. Vendees from plaintiffs of such negotiable warehouse receipts in turn use such receipts for the transfer of title to the grain represented thereby and also for collateral to bank loans. Many of such warehouse receipts are presently outstanding and on information and belief, plaintiffs state that such receipts are pledged as collateral for loans aggregating many millions of dollars. If the Commission is permitted to take jurisdiction over the complaint, annexed hereto as Exhibit "A", and conduct hearings thereon, or issue an order pursuant thereto, it will unquestionably, under the decisions of the Supreme Court of Illinois, order the plaintiffs to cease storing grain owned by them in public warehouses operated by them, and that such action by the Commission would throw a cloud upon the validity and negotiability of outstanding warehouse receipts issued by a plaintiff warehouseman representing grain owned by him and stored in his own warehouse and destroy and seriously impair their use and value in commercial transactions. The mere fact that the Commission shall enter into the hearing set on October 24, 1944, would have the immediate effect of creating such a cloud upon such warehouse receipts out-

standing presently and in the future. Plaintiffs further state that the damage in dollars to which the plaintiffs and the grain trading public would be subjected, as a result of the said resulting cloud upon the said warehouse receipts, is not susceptible of accurate determination and is irreparable.

XII

Under the Act commonly known as Illinois Public Warehouse Act approved April 15, 1871 (Ill. Rev. Stat. 1943, Chap. 114, Sec. 191) it is provided that any person who shall transact the business of a public warehouse of Class A or of Class B without procuring a license as therein provided, or who shall violate or participate in the viola-
[fol. 10] tion in any of the provisions of the said Act as amended, for which no other penalty is provided shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not exceeding $5000.00, or be imprisoned for not exceeding six months for each offense. Under the Illinois Commerce Commission Act of the State of Illinois under which the Illinois Commerce Commission acts (Ill. Rev. State. Chapter 111⅔, Sec. 1, et. seq.), it is provided that any public utility or any corporation other than a public utility which violates or fails to comply with any provisions of that Act or which fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement of any part or provision thereof, of the Commission, made or issued under authority of that Act, in a case in which a penalty is not otherwise provided for in that Act, shall, upon conviction, be punished by a fine of not less than $500.00 nor more than $2000.00 for each and every offense. By said last named Act it is also provided that every violation of the provisions of that Act or of any order, decision, rule, regulation, direction or requirement of the Commission, or any part or portion thereof, by any corporation or person, is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

By its order entered herein on October 10, 1944 overruling the motions to dismiss the complaint annexed hereto as Exhibit "A" and setting the said complaint for hearing the Commission has decided that plaintiffs are subject to the laws of the State of Illinois as public grain warehousemen in order to compel the plaintiffs holding grain ware-

house licenses issued by the federal government to comply with the Illinois law respecting public grain warehouses or suffer the penalties fixed by Illinois law for not complying with the Illinois provisions. Plaintiffs further state that the complaint annexed hereto as Exhibit "A" prays that after hearings, the Commission shall assess penalties for such violations of the Illinois State Constitution and Illinois statutes as have occurred on the part of the plaintiffs, including the cancellation of grain warehouse licenses.

[fol. 11] XIII

By the law of the State of Illinois, it is the duty of the Attorney General of the State not only to represent the Commission in all appeals from its orders, but also to institute and prosecute all sections and proceedings in favor of or for the use of the State of Illinois which may be necessary in the execution of the duties of any State officer, including the Commission. That said George F. Barrett, Attorney General of the State of Illinois, as these plaintiffs are informed and believe and state the fact to be, threatens to enforce against these plaintiffs all the terms and provisions of the Illinois Statutes relating to public grain warehouses against these plaintiffs respectively. The plaintiffs further allege that, unless restrained by this Honorable Court the said defendant Attorney General intends to, and will, enforce against these plaintiffs and each of them and their respective officers, agents, servants and employees, the various pains, penalties and forfeitures provided for under the Illinois law respecting public grain warehousemen and intends to and will commence and prosecute the various prosecutions, proceedings and suits purported to be authorized or required under the laws of the State of Illinois respecting public grain warehousemen, and that such action on the part of such defendant will necessarily and unavoidably involve the plaintiffs and their respective officers, agents servants and employees in a multiplicity of legal proceedings and involve and threaten them with the waste and dissipation of their employees, or coerce them into quitting the employ of the plaintiffs in order to avoid prosecution and punishment and their imprisonment under color of legal proceedings, and will foreclose and prohibit the transaction of the business of these plaintiffs, the seizure of their property, books and records, the loss of

their customers and the destruction of their good will and property, all to the irreparable damage of the respective plaintiffs, and that all and singular the damages resulting for such acts and proceedings would be incapable of admeasurement and adjudication at law.

[fol. 12]

XIV

Plaintiffs further state that the said order of the Commission dated October 10, 1944 is invalid on its face, because of the attempt demonstrated thereby to regulate in a field which has been preempted and occupied by the federal government and that any proceedings pursuant to that order of the Commission would be futile and that the expenditures which each plaintiff would be required to make in the defense of any proceedings under said order of the Commission would be many thousand dollars. Plaintiffs further state that the hearing before the Commission would be protracted in that if conducted under the allegations of the complaint annexed hereto as Exhibit "A", it would involve multiple plaintiffs and numerous issues, particularly those relating to the requested fixation of storage rates for the future. Plaintiffs state that hearings involving public utility rate making are extremely technical and expensive, necessitating the services of engineers, appraisers, accountants and attorneys to ascertain and establish, through research, survey and examination those traditional elements of rate making which always enter into such rate cases; namely, the original cost of the warehouse property, its reproduction cost new and its reproduction cost less depreciation. Plaintiffs further state that such expenditures would entail an irreparable damage to each of the plaintiffs in that no redress is legally available to any of the plaintiffs for the recoupment of any of the expenses to which it would be subjected in the defense of the illegal proceeding threatened to be taken by the Commission in the order of hearing specified in the introductory paragraph thereof.

XV

Plaintiffs state that they have no adequate remedy at law in the premises.

Wherefore, Plaintiffs Pray:

First: That process may issue against the Illinois Commerce Commission and its Chairman John D. Biggs, and

its members, William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, and that due and proper service of such process and of this complaint, be forthwith [fol. 13] made by filing a copy thereof in the offices of the Illinois Commerce Commission in the Office of the Secretary of said Commission at the State Capitol Building in Springfield, Illinois, and at his office at Chicago, Illinois, 19th Floor, 160 North LaSalle Street, and an additional copy upon each of the other defendants herein, wherever he may be found in the State of Illinois.

Second: That pending final hearing herein, and in the meantime, a restraining order and preliminary injunction issue enjoining the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., from further prosecuting the said proceedings under the complaint annexed hereto as Exhibit "A" and enjoining said Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, from proceeding with hearings thereunder on October 24, 1944, or at any other time prior to the final order and determination of this cause, or entering any order in said proceedings, and enjoining defendant George F. Barrett, Attorney General of the State of Illinois, from instituting or prosecuting against the plaintiffs, or any of them, any action or proceeding for any of the alleged violations of the laws of the State of Illinois in the complaint annexed hereto as Exhibit "A".

Third: That, upon final hearing and determination of this cause, this court order, adjudge and decree that the action of the Illinois Commerce Commission, by said order of October 10, 1944, setting for hearing the complaint annexed hereto as Exhibit "A" be declared to be wholly null and void, and further adjudge and decree that the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., be perpetually enjoined from further prosecuting the said proceedings under the said complaint and that the said Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, be per-

petually enjoined from proceeding further with hearings under said complaint, and that defendant George F. Barrett, Attorney General of the State of Illinois, be perpetu-
[fol. 14] ally enjoined from instituting or prosecuting against the plaintiffs, or any of them, any action or proceeding for any of the alleged violations of the laws of the State of Illinois in the complaint annexed hereto as Exhibit "A".

Fourth: That this court grant to Plaintiffs, and each of them such other and further relief as may be warranted in the premises.

Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, and Stratton Grain Company, by Ferre C. Watkins, 135 South LaSalle Street, Chicago, Illinois, Their Attorney.

Ferre C. Watkins, Tel. Franklin 2900.

Continental Grain Company, by A. L. Rittenberg, 11 South LaSalle Street, Chicago, Illinois, Its Attorney.

Poppenhusen, Johnston, Thompson & Raymond, Tel. Randolph 0220.

Rosenbaum Bros., and Cargill, Inc., Leo F. Tierney, Frank W. Sullivan, by Mayer, Meyer, Austrian & Platt, 231 South LaSalle Street, Chicago, Illinois, Their Attorneys.

Mayer, Meyer, Austrian & Platt, Tel. State 0600.

[fol. 15] *Duly sworn to by D. H. Lipsey. Jurat omitted in printing.*

[fol. 16] EXHIBIT "A"

STATE OF ILLINOIS

Illinois Commerce Commission

No. 32267

DANIEL F. RICE & COMPANY, a partnership, grain dealer, on behalf of his customers and public grain producers, dealers and processors, similarly situated, Plaintiff,

vs.

THE CHICAGO GRAIN CORP., NORRIS GRAIN ELEVATOR CO., General Mills, Inc.-Star Grain Division, Rosenbaum Bros., Santa Fe Elevator Corp., Norris Grain Co., Cargill, Inc., Continental Grain Co., Great Lakes Elevator Corp., Cargill Illinois Grain Co., Stratton Grain Co., and Board of Trade of the City of Chicago, Defendants

In the matter of unjust, unreasonable and discriminatory rates and charges, the maintenance of discriminatory practices, and the violation of law by public grain warehouses.

COMPLAINT—Filed July 28, 1944

Daniel F. Rice & Company, plaintiff, appearing on behalf of its customers and grain producers, dealers and processors similarly situated, by Irvin Rooks and Lee A. Freeman, its attorneys, complains of the defendants as follows:

1. Daniel F. Rice & Company, an Illinois partnership, is an owner, shipper and dealer in grain in the state of Illinois, is a member of the Chicago Board of Trade and other grain exchanges, and is and for some years past has been a consumer of the defendant warehousemen named herein.

2. Daniel F. Rice & Company purchases, sells and deals in grain on the Chicago Board of Trade for and on behalf [fol. 17] of grain producers, grain dealers and grain processors, who thereby are and have been consumers of the defendant warehousemen named herein. This complaint is brought not only on behalf of Daniel F. Rice & Company and his customers, but as representative of, and for the use and benefit of all public grain producers, dealers and

processors, who have stored grain in the public grain elevators maintained by defendant warehousemen, or who have paid grain storage and warehousing charges, and who therefore have rights in common with the plaintiff herein.

3. Defendants, Chicago Grain Corp., Norris Grain Elevator Co., Rosenbaum Bros., Santa Fe Elevator Corp., Norris Grain Co., Great Lakes Elevator Corp., Cargill Illinois Grain Co., all Illinois Corporations, and Cargill, Inc., General Mills, Inc.-Star Grain Division, Continental Grain Co., Stratton Grain Co., all foreign corporations, (hereinafter referred to as "warehousemen") own or control, and operate property and facilities within the state of Illinois, which are used in the public storage and warehousing of grain for hire and compensation, and as such are all public utilities as defined in Section 10 of an act of the State of Illinois entitled "An Act concerning public utilities", approved June 29, 1921, as amended (hereinafter "Public Utility Act") which reads in part:

"The term 'public utility', when used in this Act means and includes every corporation * * * their lessees, trustees, or receivers * * * that now or hereafter:

"(a) May own, control, operate or manage, within the State, directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with * * * the storage or warehousing of grain; * * * or that

"(b) May own or control any franchise, license, permit or right to engage in any such business.

* * * * * * *

"The term 'warehouse' when used in this Act, includes all elevators or storehouses where grain is stored for a compensation, whether the property stored be kept separate or not."

4. The defendant Board of Trade of the City of Chicago (hereinafter "Chicago Board of Trade") is a board of trade and grain exchange, organized under a Special Act of the Illinois Legislature, approved February 18, 1859.

[fol. 18] 5. The defendant warehousemen own or control, and operate grain elevator capacity for public storage and

warehousing of grain. In addition, they own and deal in grain, and usually store such grain in portions of their own elevators designated as private storage capacity. They have been issued and possess either state or federal grain warehouse licenses. The warehousemen involved, the grain elevators owned or controlled, and operated, and the type of license possessed are as follows:

Warehouseman	Grain Elevator	License Possessed
Chicago Grain Corp.	Irondale A	State
Norris Grain Elev. Co.	Norris	State
Norris Grain Co.	Wabash	Federal
Norris Grain Co.	Elevator J*	Federal
General Mills, Inc. Star Grain Division	Rialto	Federal
Rosenbaum Bros.	Calumet	Federal
Rosenbaum Bros.	N. Y. Central*	Federal
Santa Fe Elevator Corp.	Santa Fe	Federal
Cargill Ill. Grain Co.) Cargill, Inc.)	Chicago & N. W. Terminal & Annex	Federal
Continental Grain Co.	Rock Island Terminal C	Federal
Continental Grain Co.	Rock Island Terminal D	Federal
Great Lakes Elevator Corp.	National	Federal
Stratton Grain Co.	Dickinson*	Federal

* Not regular for delivery on Board of Trade contracts.

The total available grain elevator and warehouse capacity in the Chicago terminal market is approximately 40,000,000 bushels out of which approximately 27,000,000 bushels of capacity has been designated for public storage. The remaining capacity is designated as private storage capacity although such private capacity may be used from time to time for public storage of grain.

6. The grain storage rates established by each and all of said warehousemen are:

For public storage of grain.

On all grain, soybeans and flax seed received in bulk and inspected in good condition.

Unloading and loading out charges.

[fol. 19] 1¼¢ per bushel for receiving and shipping and for first ten day's storage or part thereof.

Storage charges.

1/25 of 1¢ per bushel per day for each additional day storage (after first ten) so long as said grain, soybeans and flax seed remain in good condition.

Conditioning, insurance and other services.

No rates established.

For storage of grain owned by or under control of the United States of America or an agency thereof:

Unloading and loading out charges.

For barley, wheat, rye and corn received by rail or water, ½¢ per bushel for unloading, ½¢ per bushel for loading out.

Storage charges.

For barley, wheat and rye received by rail or water, 1/30 of 1¢ per bushel per day for the first 210 days of the annual period for computing charges, and no charge for the remainder of the period.

For corn received by rail or water, 1/30 of 1¢ per bushel per day for the first 210 days of the annual period for computing charges and no charge for the remainder of the period.

Conditioning, insurance and all other charges.

For barley, wheat and rye, ⅜ of 1¢ per bushel per month or fraction thereof, for the first six storage months of the annual period for computing charges.

For corn, ⅜ of 1¢ per bushel per month, or fraction thereof, for first three storage months, of the period used for computing charges.

7. Each and all of said warehousemen have unlawfully maintained and do now maintain unjust, unreasonable and excessive rates and charges for services rendered, contrary to Section 32 of the Public Utility Act, in that the grain storage rates charged public grain producers, owners, shippers, dealers, receivers and processors, and charged your plaintiff, are grossly excessive and exorbitant. Such rates have resulted in excess earnings, profits and return to the defendant warehousemen and have far exceeded the reasonable value and worth of the service rendered.

8. Each and all of said warehousemen have been and are guilty of discrimination against public grain producers, owners, shippers, dealers, receivers and processors, and against your plaintiff, and have been and are granting [Vol. 20] unwarranted preferences and advantages to the federal government and agencies thereof, as an owner, dealer and storer of grain, contrary to Section 38 of the Public Utility Act and Section 15 of "An Act to regulate public warehouses, etc.", approved April 25, 1871, as amended (hereinafter "Illinois Grain Warehouse Act") by storing and warehousing grain for public grain producers, owners, shippers, dealers, receivers and processors, and charged your plaintiff, at a grossly unwarranted and unreasonable difference in grain storage rates than are charged the federal government and agencies thereof.

9. All or some of said warehousemen, by reason of their dual and conflicting positions as public grain warehousemen and dealers in grain, have received undue preferences and advantages of such dealers, to the detriment and in discrimination against public grain producers, owners, shippers, dealers, receivers and processors, and your plaintiff, as customers of such warehousemen, all in violation of Sections 32, 38 and 41 of the Public Utility Act, and of Sections 6, 11, 15 and 17 of the Illinois Grain Warehouse Act, by:

(a) Mixing high quality public grain with inferior grain owned or acquired by the defendant warehouseman to reduce grain delivered to the point of minimum quality within the established grain trade.

(b) Sacrificing part of storage charges to offset purchases and sales of grain and otherwise manipulating and rebating storage charges on grain stored in private warehouse space.

(c) Furnishing transit tonnage to owners of public grain of the most undesirable type, while withholding for their own use the most desirable transit tonnage, thereby placing the owners of public grain at a distinct disadvantage in merchandising grain in storage.

(d) Providing for storage of public grain in old wooden warehouses carrying exorbitant insurance premium rates, while storing the warehouseman's own grain in modern warehouses with reasonable insurance premium rates.

(e) Unduly and imprudently delaying loading of grain after return of warehouse receipt issued by the particular warehouseman, the tender of proper charges and the receipt of instructions to load grain for delivery.

10. The existing practice of all or some of said warehousemen in occupying a dual and conflicting position as [fol. 21] public grain warehouseman and at the same time dealing in grain, and of storing or mixing in his public warehouse grain in which he has an interest, direct or indirect, is unlawful and contrary to the public policy of the state as expressed in Article XIII of the Illinois Constitution of 1870. Such public warehousemen are prohibited under the constitution from holding an interest inconsistent with and adverse to those whom they are required to serve. Such practices have been enjoined and declared illegal by the Supreme Court of Illinois in *Central Elevator Co.* v. *People*, 174 Ill. 203 (1898); *Hannah v. People*, 198 Ill. 77 (1902); and the vice thereof recognized by this commission in *Re Board of Trade Whse. Corp.*, Ill C. C. Docket No. 17662, P. U. R. 1928E, 65.

11. The following grain elevators and warehouses owned or controlled, and operated by the warehousemen indicated are unreasonable, unsafe, improper, inadequate and inefficient in that said elevators consist of old wooden structures which may be readily destroyed by fire, and as a consequence require exorbitant and prohibitive insurance premium rates:

Elevator	Owner
Wabash	Norris Grain Company
Rock Island Terminal	
C & D	Continental Grain Company
National	Great Lakes Elevator Corp.

12. All or some of the warehousemen, contrary to their duty as public warehousemen to render adequate, proper and efficient warehousing service, have failed to adequately, properly and efficiently store and handle public grain, and as a consequence the character and quality of the grain so inadequately, improperly and inefficiently stored and handled, has deteriorated to the damage of public grain producers, owners, shippers, dealers, receivers, processors, and your plaintiff.

13. All or some of the warehousemen have violated the laws of the state of Illinois by:

(a) Failing to secure prior approval of the Illinois Commerce Commission before entering into management, construction, engineering, supply, financial and similar contracts and arrangements between such warehousemen as public utilities and an affiliate, as required by Section 8(a) of the Public Utility Act.

[fol. 22] (b) Failing to secure prior approval of contracts, leases, etc., between such warehousemen and other public utilities, as required by Section 27 of the Public Utility Act.

(c) Failing to secure authorization of the commission before issuing securities payable at periods of more than twelve months after date, as required by Section 21 of the Public Utility Act.

(d) Failing to file, print and publish all schedules of rates and charges, as required by Section 33 of the Public Utility Act.

(e) Rendering storage and warehousing services without having filed and published the rates, charges, rules and regulations governing such services, in violation of the prohibitions contained in Section 35 of the Public Utility Act.

(f) Abandoning and discontinuing public grain warehousing service and capacity without first securing the approval of the commission, in violation of Section 49(a) of the Public Utility Act.

(g) Charging unjust, unreasonable and discriminatory rates and pursuing discriminatory practices, in violation of Section 32, 38 and 41 of the Public Utility Act and Section 15 of the Illinois Grain Warehouse Act.

(h) Operating without a state license, in violation of Section 3 of the Illinois Grain Warehouse Act.

(i) Mixing public grain with grains of different grades, in violation of Sections 6 and 17 of the Illinois Grain Warehouse Act.

14. In consequence of the unreasonable and excessive rates and charges maintained by said warehousemen, the discriminatory rates maintained and discriminatory practices perpetrated, the inadequate, improper, unsafe and in-

efficient service rendered, and the violations of the state constitution and state statutes:

The required equality between public warehouse operators and public dealers, receivers and processors of grain is destroyed;
free competition in the purchase and sale of grain is seriously diminished;
arbitrary and unnatural grain prices and fluctuations in the price of grain have resulted;
dealings in futures on the Chicago Board of Trade are uncertain and unattractive;
the free distribution and marketing of grain is impeded, [fol. 23] with particularly serious effect upon the grain export market and trade; and
the status and importance of the Chicago Board of Trade has declined.

15. The Chicago Board of Trade has formulated and adopted Rules and Regulations governing its maintenance as a commercial grain exchange. These rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In fact, however, the Rules and Regulations adopted by the Chicago Board of Trade are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory.

16. The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain and Warehouse Act.

Wherefore, complainant Daniel F. Rice & Company, for and on behalf of his customers and public grain producers, dealers and processors similarly situated, prays that this Honorable Commission:

(a) Serve copies of this complaint upon all of the defendants named herein.

(b) Require said defendants to answer this complaint or otherwise plead thereto, within ten days after service thereof.

(c) Set the cause for immediate hearings.

(d) Institute an inquiry and investigation [illegible] unjust, unreasonable and discriminatory rates and practices, the inadequate, improper and unsafe services rendered, and the innumerable violations of law, as specified above.

(e) Order the defendants herein to make available to the Commission and the plaintiff, all of the books, records and files relating to grain storage rates, charges and practices specified above.

(f) After hearings, fix just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain.

[fol. 24] (g) After hearings, issue an order prohibiting the discriminatory practices enumerated above, and establishing just, reasonable, safe, proper, adequate and efficient grain storage and warehousing service.

(h) After hearings, assess penalties for such violations of the Illinois state constitution and Illinois statutes as have occurred, including the cancellation of grain warehouse licenses.

(i) Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific.

(j) Enter such order or orders from time to time during the hearings as the necessities and justice of the situation require, in order to afford maximum relief as promptly as possible.

Daniel F. Rice & Company, By Joseph J. Rice.

Irvin Rooks, Lee A. Freeman, *Attorneys for Plaintiff*, 3710—135 S. LaSalle St., Chicago 3, Illinois.

State of Illinois,
County of Cook, ss.

Joseph J. Rice, being first duly sworn, on oath deposes and says that he is a partner of Daniel F. Rice & Company,

plaintiff in the above entitled cause; that he has read the foregoing complaint by him subscribed on behalf of said plaintiff; that he knows the content thereof and that the allegations therein contained are true of his own knowledge, information and belief.

—— ——

Subscribed and sworn to before me this 28th day of July, A. D. 1944. —— ——, Notary Public.

[fol. 25] EXHIBIT "B"

State of Illinois

Illinois Commerce Commission

(Caption—32267)

Motion to Dismiss

Respondents, Rosenbaum Bros., Santa Fe Elevator Corporation, Norris Grain Company, Cargill, Inc., Continental Grain Company, Great Lakes Elevator Corporation, Statton Grain Company, and each of them move the Commission as follows:

I

To dismiss complainants' complaint, because the subject-matter thereof is beyond the jurisdiction of said Commission and is exclusively within the jurisdiction of the Government of the United States, by reason of paragraph 3 of Section 8 of Article I of the Constitution of the United States and of the Act of Congress, commonly known as the United States Warehouse Act (7 U. S. C. Section 241, et seq.) and the Act of Congress commonly known as the Commodity Exchange Admin tration Act, (7 USC Section 1, et seq.) and of the official Regulations promulgated thereunder. In support of said motion, a copy of each of said Acts and the Regulations thereunder, is hereto attached, marked "Exhibit A" and "Exhibit B", respectively.

II

In the alternative, and without waiving the foregoing motion to dismiss, these Respondents, and each of them, move the Commission to strike said complaint and each

paragraph thereof separately, and more particularly Paragraphs 3, 7, 8, 9, 9(a), 9(b), 9(c), 9(d), 9(e), 10, 11, 12, 13, [fol. 26] 13(a), 13(b), 13(e), 13(d), 13(e), 13(f), 13(g), 13(h), 13(i), 14, 15 and 16, for lack of jurisdiction in the Commission for the reasons urged in Section I hereof.

Respectfully submitted, Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, and Stratton Grain Company, by —— ——, 135 South LaSalle Street, Chicago, Illinois, Its Attorney. Continental Grain Company, by —— ——, 11 South LaSalle Street, Chicago, Illinois, Its Attorneys. Rosenbaum Bros., and Cargill, Inc., by —— ——, 231 South LaSalle Street, Chicago, Illinois, Their Attorneys.

Exhibit "A"—Regulations for Warehousemen Storing Grain, approved May 9, 1931, amended December 17, 1936. Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended.

Exhibit "A" re Motion to Dismiss.

Exhibit "B"—Commodity Exchange Act, as amended. Rules and Regulations of the Secretary of Agriculture promulgated thereunder. Orders of Commodity Exchange Commission pursuant to Section 4(a) and order of Secretary of Agriculture pursuant to Section 5(a)(4) of Act.

Exhibit "B" re Motion to Dismiss.

[fol. 27] EXHIBIT "C"

State of Illinois

Illinois Commerce Commision, Springfield

32267

DANIEL F. RICE & COMPANY,

vs.

THE CHICAGO GRAIN CORPORATION, et al.

Complaint as to unjust, unreasonable and discriminatory rates and charges, the maintenance of discriminatory practices, and the violation of law by public grain warehouses.

October 11, 1944.

To All Interested Parties:

Notice of Denial of Motions; and of Setting

You are hereby notified that the Commision, in conference on October 10, 1944, denied the following motions in the above-styled proceeding:

(1) Motion by respondents, Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Inc. to dismiss the complaint filed in this case on July 28, 1944, on the ground that the Commision is without jurisdiction of the subject matter thereof;

(2) Alternative Motion by respondents, Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Inc. to strike the complaint filed in this case on July 28, 1944, and each paragraph thereof separately, and more particularly Paragraphs 3, 7, 8, 9, 9(a), 9(b), 9(c), 9(d), 9(e), [fol. 28] 10, 11, 12, 13, 13(a), 13(b), 13(c), 13(d), 13(e), 13(f), 13(g), 13(h), 13(i), 14, 15 and 16, for lack of jurisdiction in the Commission for the reasons urged in Section I of Motion to Dismiss case filed herein on August 30, 1944;

(3) Motion by respondents, Chicago Grain Corporation and Norris Grain Elevator Company, to dismiss the complaint filed in this case on July 28, 1944, on the ground that the complaint lacks particularly and is substantially insufficient in law.

(4) Motion by respondent, Board of Trade of the City of Chicago, that it be dismissed from this proceeding on the ground that the Commission is without jurisdiction of the subject matter of this complaint filed in this case on July 28, 1944, in so far as the same is directed against said respondent, Board of Trade of the City of Chicago.

You are hereby further notified that the Commission has set the above case for hearing at the office of the Commission at Chicago, Illinois, 19th Floor, 160 North LaSalle Street, on Tuesday, October 24, 1944, at the hour of 10:00 A. M.

Kindly acknowledge receipt of this notice.

Very truly yours, Illinois Commerce Commission,
(s.) Joseph F. Gubbins, Secretary.

NMB/bg

[fol. 29] In the District Court of the United States

[Title omitted]

Notice of Motion—Filed October 23, 1944

To: Irvin Rooks & Lee A. Freeman, Rm. 3710—135 S. La Salle St. George F. Barrett, Attorney General of the State of Illinois, 208 S. La Salle Street.

Please Take Notice that the undersigned will bring the attached Motion for a Preliminary Injunction on for hearing before Judge Elwyn R. Shaw, or before such other judge [fol. 30] who may be sitting in his place and stead, in Room 207, United States Court House, Chicago, Illinois, on Monday, October 23, 1944, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Ferre C. Watkins, 135 S. La Salle St., Attorney for Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation and

Stratton Grain Company. Poppenhusen, Johnston, Thompson & Raymond, 11 S. La Salle St., Attorneys for Continental Grain Company. Mayer, Meyer, Austrian & Platt, 231 S. LaSalle Street, Attorneys for Rosenbaum Bros. and Cargill, Inc.

Received a copy of the above and foregoing notice, together with copy of Motion for a preliminary Injunction therein mentioned, this 20th day of October, 1944.

George F. Barrett, Attorney General. Irvin Rooks and Lee A. Freeman.

[fol. 31] IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—44-C-1257)

MOTION FOR PRELIMINARY INJUNCTION—Filed October 23, 1944

Come now plaintiffs, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., and move the court for a preliminary injunction in the above entitled cause enjoining

(a) the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., their agents, servants, employees and attorneys, from further prosecuting proceedings under the complaint of said defendants before the Illinois Commerce Commission, in which said defendants seek to have said Illinois Commerce Commission regulate public elevator warehouses which the plaintiffs operate under licenses and regulations issued by the Secretary of Agriculture pursuant to authority conferred upon him under the United States Warehouse Act (7 U. S. C., Section 241, et seq.);

(b) the defendant George F. Barrett, Attorney General of Illinois, from instituting or prosecuting against the plaintiffs, or any of them, any action or proceeding for alleged violation of the act commonly known as the Illinois Public Warehouse Act, approved April 15, 1871 (Ill. Revised Stat.

1943, Ch. 114, Sec. 191), and the act commonly known as the Illinois Commerce Commission Act (Ill. Revised Stat., Ch. 111⅔, Sec. 1, et seq.), all relating to the operation of warehouses for the purpose of storing grain; and

(c) the Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, from proceeding with hearings under an order of [fol. 32] said Commission of date October 10, 1944, or entering any further order in said proceedings, on the complaint of the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., demanding the regulation under the laws of Illinois of the operation by the plaintiffs of elevator warehouses belonging to said plaintiffs and presently operated under licenses and regulations issued by the Secretary of Agriculture of the United States under the United States Warehouse Act (7 U. S. C., Sec. 241, et seq.).

The grounds in support of this motion are as follows:

1. Unless restrained, the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., will immediately, and not later than October 24, 1944, proceed to prosecute a complaint filed and pending before the Illinois Commerce *Commerce* Commission and set for hearing October 24, 1944, in which the said defendants, contrary to law, seek to have the Illinois Commerce Commission regulate these plaintiffs in their operation of elevator warehouses in the State of Illinois, although the regulation of said plaintiffs as public warehousemen for the storage of grain for interstate commerce has been completely preempted and occupied by the Federal Government under the United States Warehouse Act (7, U. S. C., Section 241, et seq.) and the regulations thereunder.

2. Unless restrained, the defendant George F. Barrett, Attorney General of the State of Illinois, will institute proceedings and prosecutions to enforce against these plaintiffs, and each of them, and their respective officers, agents, servants and employees, pains, penalties and forfeitures

provided for under the Illinois Law respecting public grain warehousemen, although these plaintiffs, operating elevator warehouses federally licensed, are not amenable to such Illinois laws respecting public grain warehousemen, because the field of regulation of public grain warehousemen has been completely preempted and occupied by the United States Government under the act commonly known as the United States Warehouse Act (7 U. S. C., Sec. 241, et seq.) and of the regulations thereunder.

[fol. 33] 3. Unless restrained, the Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, they will immediately, to-wit, October 24, 1944, under an order of said Commission entered on October 10, 1944, begin hearings on the complaint of the defendants Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., in which proceedings the said defendants are determined to regulate, or to seek regulation of, the plaintiffs as warehousemen under the laws of Illinois, although the plantiffs are in their operations as warehousemen, solely under the jurisdiction of the United States Government, by reason of the United States Warehouse Act and the regulations thereunder. By an order of said Commission of date October 10, 1944, said Commission has already determined that it has jurisdiction to regulate these plaintiff warehousemen and has set hearings on the said complaint of the defendant Daniel F. Rice, et al. for October 24, 1944.

4. Immediate and irreparable injury, loss and damage will result to the plaintiffs by reason of the threatened action of the defendants, as more particularly appears in the verified complaint filed herein. The plaintiffs have no adequate remedy at law.

5. If this preliminary injunction be granted, the injury, if any, to defendants herein, if final judgment be in their favor, will be inconsiderable and will be adequately indemnified by bond.

Ferre C. Watkins, Attorney for Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes

Elevator Corporation and Stratton Grain Company; Poppenhusen, Johnston, Thompson & Raymond, Attorneys for Continental Grain Company; Mayer, Meyer, Austrian & Platt, Attorneys for Rosenbaum Bros. and Cargill, Inc.

[fol. 34] In United States District Court

(Caption—44-C-1257)

Appearance—Filed November 1, 1944

Mr. Clerk:

I enter my appearance as attorney for Illinois Commerce Commission, John D. Biggs, its Chairman, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of Illinois, in the above-entitled case.

Dated at Chicago, Illinois, on 1st day of November, 1944.

George F. Barrett, Attorney General of Illinois, Address: 208 S. La Salle St., Rm. 786, Chicago.

[File endorsement omitted]

[fol. 35] In the District Court of the United States

(Caption—44-C-1257)

Appearance—Filed November 8, 1944

To the Clerk of the United States District Court:

We hereby enter our appearance in the above entitled cause as attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley.

Dated at Chicago, Illinois, on the 8th day of November, 1944.

Irvin Rooks, Lee A. Freeman, Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, 135 S. LaSalle St., Suite 3710, Chicago 3, Illinois, Andover 2112.

[fol. 36] In the District Court of the United States

* * (Caption—44-C-1257) * *

Answer of Illinois Commerce Commission and Its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Members of Said Commission, and George F. Barrett, Attorney General of the State of Illinois, to Plaintiffs' Motion for a Preliminary Injunction—Filed December 28, 1944

Come now the defendants, Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, to answer the motion of the plaintiffs for a preliminary injunction in the above entitled cause and for answer state:

1. These defendants deny the allegations contained in paragraph 1 of said motion, wherein it is stated that "the defendants, contrary to law, seek to have the Illinois Commerce Commission regulate these plaintiffs in their operation of elevator warehouses in the State of Illinois, although the regulation of said plaintiffs as public warehousemen for the storage of grain for interstate commerce has been completely preempted and occupied by the Federal Government under the United States Warehouse Act (7, U. S. C., Sec. 241, et seq.) and the regulations thereunder." And these defendants specifically deny the allegations contained in paragraph 1 of said motion wherein it is concluded that the regulation of public warehousemen has been completely [fol. 37] preempted and occupied by the Federal Government under the United States Warehouse Act.

2. These defendants deny the allegations contained in paragraph 2 of said motion, and on the contrary allege that no action has been instituted by the Attorney General of Illinois to enforce any statutes or penalties against the plaintiffs herein nor has there been any threatened action by the Attorney General of Illinois against the said plaintiffs for the prosecution of any penalties against the said

plaintiffs; that in the event the Attorney General of Illinois should file or institute such proceedings for penalties or forfeitures under the Illinois statutes, the plaintiff warehousemen would have an adequate opportunity to defend said proceeding; that these defendants specifically deny the allegations contained in paragraph 2 of said motion, wherein the plaintiffs conclude that they are not amenable to the Illinois laws with respect to public grain warehousemen.

3. That these defendants deny the allegations contained in paragraph 3 of said motion, wherein it is stated that the Illinois Commerce Commission and its members "will immediately, to-wit: October 24, 1944, under an order of said Commission entered on October 10, 1944, begin hearings on the complaint of the defendants Daniel F. Rice," etc.; that defendants deny the conclusions set forth in paragraph 3 that the plaintiff warehousemen are solely under the jurisdiction of the United States Government by reason of the United States Warehouse Act and the regulations thereunder; that these defendants admit the allegations contained in paragraph 3 of said motion, wherein it is alleged that "By an order of said Commission of date October 10, 1944, said Commission has already determined that it has jurisdiction to regulate these plaintiff warehousemen"; and these defendants further allege that the said Commission by its order of October 10, 1944 found that it had jurisdiction to regulate the plaintiff warehousemen with respect to the issues presented in the Rice complaint.

4. That these defendants specifically deny the allegations contained in paragraph 4 of said motion, wherein it is alleged that "Immediate and irreparable injury, loss [fol. 38] and damage will result to the plaintiffs by reason of the threatened action of the defendants, as more particularly appears in the verified complaint filed herein." And these defendants further deny that the plaintiffs have no adequate remedy at law, as set forth in paragraph 4 of said motion.

5. That these defendants deny the allegations contained in paragraph 5 of said motion, wherein it is stated that "If this preliminary injunction be granted, the injury, if any, to defendants herein, if final judgment be in their

favor, will be inconsiderable and will be adequately indemnified by bond."

6. That these defendants allege that the court in the above entitled cause is without jurisdiction of the subject matter and of the parties hereto by reason of section 24 (1) of the Judicial Code, Title 28 U. S. C. A. sec. 41 (1), commonly referred to as the Johnson Act Amendment of 1934; that the court is without jurisdiction to grant any relief to plaintiffs for the reason that the complaint filed herein is not properly verified and does not establish a basis for equitable relief; that plaintiffs have failed to set forth any facts in their complaint herein or in the motion for preliminary injunction herein which in any way demonstrates that the plaintiffs will suffer grave and irreparable damage unless equity grants relief herein; that the court herein is without jurisdiction to grant any relief to the plaintiffs herein for the reason that plaintiffs have to exhaust their statutory or administrative remedies available to them; that this court is without jurisdiction of the complaint and motion herein for the reason that plaintiffs have an adequate remedy at law; that this court is without jurisdiction of the subject matter and the parties hereto for the reason that plaintiffs have failed to set forth sufficient allegations in their complaint filed herein or the motion field herein which will grant federal jurisdiction herein; that this court is without jurisdiction of the subject matter and of the parties hereto for the reason that the U. S. Warehouse Act, 7 U. S. C. A. sec. 241, as amended, is limited in its scope and does not preclude jurisdiction of the Illinois Commerce Commission; that this court lacks jurisdiction herein for the reason that the U. S. Warehouse Act, as aforesaid, does not regulate the matters in issue [fol. 39] before the Illinois Commerce Commission on the Rice complaint, whereas the statutes and laws of the State of Illinois do make provisions for the disposition of said issue; that the plaintiffs have failed to set forth a cause of action in their complaint filed herein or in the motion for preliminary injunction filed herein upon which this court can grant any relief in law or in equity.

7. That certain of the plaintiffs herein have submitted to the jurisdiction of the Illinois Commerce Commission on many occasions in the past years through the filing of their own petitions and through participation in hearings before

said Commission; that certain of the said plaintiffs did receive the benefits and protection of the regulatory power of the Commission; that no petitions for rehearing or appeals were taken from the orders of the Illinois Commerce Commission involving said plaintiffs; that the title, number and dates of said matters before the Commission are more fully set forth in the brief filed in support of defendants' position; that by reason thereof plaintiffs are now estopped from denying state jurisdiction.

8. That on December 15, 1944, Cargill Incorporated, one of the plaintiffs herein, did file a petition before the Illinois Commerce Commission for the consent and approval of the Commission to the sale of federally licensed grain elevator located in St. Clair County, Illinois, No. 32523; that in the said petition which was sworn to by the President and Secretary of Cargill Incorporated, one of the plaintiffs herein, it was alleged that said warehouse was a federally licensed warehouse under the United States Warehouse Act and further alleged that it is defined as a public utility in Section 10 of the Illinois Public Utilities Act; that on December 15, 1944, a hearing was held before the Illinois Commerce Commission on said petition; that said petition was filed and a hearing held thereon while plaintiffs' motion for a preliminary injunction was still pending before this Court; that by reason thereof plaintiffs cannot and are now estopped from denying the jurisdiction of the Illinois Commerce Commission and the complaint herein should be forthwith dismissed.

[fol. 40] Wherefore, these defendants pray that the motion of the plaintiffs herein for a preliminary injunction be denied.

Illinois Commerce Commission and its Chairman, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Members of Said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George B. Barrett, Attorney General of the State of Illinois, Attorney for Said Defendants.

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

MOTION OF ILLINOIS COMMERCE COMMISSION AND ITS CHAIRMAN, JOHN D. BIGGS, AND WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL. J. WASHINGTON, MEMBERS OF SAID COMMISSION, AND GEORGE F. BARRETT, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, TO STRIKE THE PLAINTIFF'S COMPLAINT AND DISMISS THE CAUSE—Filed December 28, 1944

Now comes Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, and for this their motion to strike the plaintiffs' complaint and to dismiss the plaintiffs' cause, say and show unto the court that the said complaint is infirm, informal, insubstantial and [fol. 41] insufficient in law and in equity; and as and for the particular grounds of the said motion the defendants say and show unto this court:

1. That this court is without jurisdiction of the subject matter of this cause and the parties hereto because the complaint does not fairly make, state or plead a cause of action under the constitution or laws of the United States of America.

2. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the Federal District Court lacks jurisdiction by reason of section 24(1) of the Judicial Code, Title 28, U. S. C. A., sec. 41(1), commonly referred to as the Johnson act, Amendment of 1934.

3. That this court is without jurisdiction of the subject matter and the parties to this cause because the complaint is not properly verified and does not establish a basis for equitable relief.

4. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the

complaint does not allege or show that the plaintiffs have first exhausted their administrative or statutory remedies available to them by the statutes of the State of Illinois.

5. That this court is without jurisdiction of the subject matter of this cause and the parties hereto because the complaint fails to show that the plaintiffs had no adequate remedy at law.

6. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint fails to show that plaintiffs will suffer grave and irreparable damage unless equity grants relief.

7. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not make, state or plead any case, cause of action or ground of relief either at law or in equity.

8. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not make, state or plead a case because of action within Federal jurisdictional requirements.

9. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the United States Warehouse act, 7 U. S. Code, sec. 241, as amended, is limited in its scope and does not preclude the [fol. 42] jurisdiction of the Illinois Commerce Commission of agricultural warehouses pursuant to the constitution and statutes of the State of Illinois.

10. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because it appears upon the face of said complaint that the United States Warehouse act is limited in its scope and does not preempt the field of regulation of grain warehouses with respect to those matters in issue before the Illinois Commerce Commission on the Rice complaint.

11. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint is otherwise and in other matters, respects and particulars infirm, informal, insubstantial and insufficient in law and in equity.

Wherefore, the defendants pray that the plaintiff's complaint be stricken and that the above entitled cause be dismissed at the cost of the plaintiffs.

Illinois Commerce Commission and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Members of Said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, Attorney for Said Defendants.

[fol. 43] In the District Court of the United States

* * (Caption—44-C-1257) * *

Answer of Defendants Rice, et al.—Filed December 30, 1944

Defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Co., a partnership, by their attorneys Irvin Rooks and Leo A. Freeman, separately answering the complaint of the plaintiffs in this action, state:

First Defense

The federal district court is precluded from taking jurisdiction in this matter under the 1934 Amendment of Section 24(1) of the Judicial Code (Title 28, U. S. C. A., Sec. 41(1)), commonly known as the Johnson Act.

Second Defense

The suit is premature and must be dismissed since plaintiffs failed to exhaust the administrative and statutory remedies available to them before the Illinois Commerce Commission.

Third Defense

Plaintiffs possess a plain, speedy and adequate remedy at law.

Fourth Defense

Plaintiffs seek to enjoin the Rice defendants and defendants Illinois Commerce Commission and its members from taking any further action in the cause presently pending

before that administrative body (Docket No. 32267). There are three additional parties defendant in the action before the Illinois Commerce Commission, who are neither parties plaintiff nor defendant in the instant action. Therefore, the relief prayed by plaintiffs is improper and beyond the power of the court to grant.

[fol. 44] Fifth Defense

The complaint fails to state a claim against these defendants upon which equitable relief can be granted, and fails to establish by affidavit, or otherwise, facts to warrant the issuance of either a temporary or permanent injunction.

Sixth Defense

Plaintiffs fail to clearly and positively establish an actual or imminent threat of grave and irreparable damage amounting to manifest oppression unless injunctive relief were granted.

Seventh Defense

The complaint must be dismissed and injunctive relief denied since the United States Warehouse Act, as amended (7 U. S. C. A., Secs. 241 et seq.), is limited in scope and does not preempt the field of regulation of federally licensed grain warehouses with respect to those matters in issue before the Illinois Commerce Commission on the Rice complaint, nor does said federal enactment preclude the Illinois Commerce Commission from exercising regulatory authority over the plaintiffs herein. A copy of the Illinois Public Utilities Act (Ill. Rev. Stats. (1943), Ch. 113⅔) is attached hereto as Exhibit "A" and, by this reference, made a part of this answer.

Eighth Defense

Defendants, further answering, state:

(1) As to Paragraph I of the complaint, deny the conclusion that this court has jurisdiction over this action, and deny that plaintiffs have a right derived from federal law to conduct their business free from regulation and interference by the Illinois Commerce Commission, or to store and own grain in public warehouses operated by them.

(2) Admit Paragraph II of the complaint.

(3) Admit that each of the plaintiffs has been issued a license by the Secretary of Agriculture of the United States, pursuant to the United States Warehouse Act; that the named plaintiffs deal in grain both on their own account and as agents for others. Defendants aver upon information and belief that each of these plaintiffs, prior to their being issued a federal license under the aforesaid act and [fol. 45] during the period of 1916 and thereafter, have and did deal in grain both on their own account and as agents for others. As to such other matters alleged in Paragraph III, defendants have no knowledge or information sufficient to form a belief as to the truth of the averments, and therefore deny said allegations, including the allegations that Great Lakes Elevator Corporation does not deal in grain both on its own account and as agent for others; that plaintiffs store grain for interstate commerce, or that all of the public grain stored is for interstate commerce; that they have duly filed their schedule of rates, charges and practices with said Secretary of Agriculture; or that the schedules of rates, charges and practices constitute proper and sufficient schedules. As to these matters, defendants demand strict proof.

(4) Admit Paragraph IV of the complaint.

(5) Admit the allegations in Paragraph V of the complaint, except defendants do not have sufficient knowledge and information to form a belief with respect to the statement that all of the grain shipped into and out of the Chicago market (stated at approximately two billion bushels for the year ended December 31, 1943) originates in and is destined to states other than Illinois, and therefore demand strict proof thereof. Defendants deny that all of the warehouse receipts issued by plaintiffs are in general use upon the Board of Trade in satisfaction of futures contracts, and that such receipts are instruments of interstate commerce.

(6) Admit, as alleged in Paragraph VI of the complaint, that they filed with the Illinois Commerce Commission a complaint charging these plaintiffs with violations of the Illinois Public Utilities Act. But defendants affirmatively state that said charges were also made in the same complaint against the Chicago Grain Corp., Norris Grain Ele-

vator Co., (state licensed warehousemen) and General Mills, Inc.-Star Grain Division (a federal licensed warehouseman). Said complaint is still pending, and none of these three parties has contested the jurisdiction of the Illinois Commerce Commission, or sought to restrain the proceedings before that agency.

(7) Admit Paragraph VII of the complaint. Defendants affirmatively state that, prior to entering into the hearing on plaintiffs' motion to dismiss, the plaintiffs were, on or about August 25, 1944, duly served with a proper notice by the Illinois Commerce Commission of the setting of the proceedings for hearing on September 12, 1944.

[fol. 46] (8) Admit Paragraph VIII of the complaint.

(9) Defendants deny each of the allegations of Paragraph IX of the complaint, including the allegations that the Illinois Commerce Commission, in overruling the motion to dismiss the complaint pending before that body, has illegally usurped jurisdiction to regulate public grain warehouses operated by plaintiffs under federal licenses; that plaintiffs are subject solely to regulation by the United States Government; that the federal government has preempted and occupied the field of regulation of public grain warehouses operating under licenses issued by it; that the regulation of plaintiffs' warehouses *are* beyond the jurisdiction of the Illinois Commerce Commission and the State of Illinois. Defendants affirmatively state that the United States Warehouse Act, as amended, is limited in scope and does not preempt the field of regulation of federally licensed warehouses with reference to those matters in issue before the Illinois Commerce Commission on the Rice complaint. Nor does said federal enactment preclude the Illinois Commerce Commission from exercising regulatory authority over the plaintiffs herein. Said commission is empowered by virtue of express state statutory authority to entertain, hear and grant the relief prayed by the Rice complaint.

(10) Defendants admit, as alleged in Paragraph X of the complaint, that under the constitution of the state of Illinois, as construed by the supreme court of that state, it is illegal for a public warehouseman to store his own grain in a public warehouse operated by him. Defendants affirmatively state that the Illinois constitutional provision

referred to by plaintiffs does not impose any penalties nor do the Illinois Public Utilities Act or Illinois Grain Warehouse Act impose any penalties for failure to comply with the said provision of the Illinois constitution. Defendants further admit that each of the plaintiffs (except Great Lakes Elevator Corporation) does business as an owner and merchandiser of grain, and regularly stores grain owned by it as well as that of others, but defendants have no knowledge or information to form a belief as to whether the Great Lakes Elevator Corporation conducts its business in a similar manner, nor the amount of grain, if any, these plaintiffs store for interstate commerce, and therefore demand strict proof thereof. Defendants deny that plaintiffs have any right to store their own grain in [fol. 47] their own warehouses or the assumption of jurisdiction by the Illinois Commerce Commission will destroy or threatens to destroy any property rights of plaintiff, or will anywise cause injury to plaintiffs.

(11) The allegation in Paragraph XI of the complaint, that the Illinois Commerce Commission will order plaintiffs to cease storing grain owned by them and stored in their own warehouses, is based upon speculation, belief and conjecture. Defendants further state that if the Illinois Commerce Commission should enter upon a hearing concerning the cause pending before it, such action would not throw a cloud upon the validity and negotiability, or impair the use or value, of warehouse receipts outstanding presently or in the future.

(12) As to matters alleged in Paragraph XII of the complaint, such matters are immaterial, state conclusions of law, and fail to state facts sufficient to invoke equity jurisdiction, and for these reasons defendants make no answer thereto.

(13) The allegations in Paragraph XIII of the complaint are based upon speculation, belief and conjecture. Defendants are informed and believe, and state the fact to be, that the Attorney General of the State of Illinois has not been requested by the Illinois Commerce Commission or anyone else to enforce any penalties of the Illinois statutes against these plaintiffs, has not threatened to, nor has he the necessary information to form the basis for the institution of a suit to enforce the penalties of the Illinois statutes.

Defendants further state that when and if the institution of a penalty suit becomes appropriate, the Attorney General of the State of Illinois would institute a single suit to collect all penalties which have then accrued, and that the plaintiffs in that suit would have an adequate and speedy opportunity to defend against said proceedings. Defendants deny the allegations of Paragraph XIII of the complaint that the Attorney General has threatened, intends to and will enforce the various pains, penalties, and forfeitures of the Illinois statutes against plaintiffs and their employees; and defendants further deny that plaintiffs and their employees will be involved in a multiplicity of legal proceedings, and plaintiffs' business or employees will otherwise be interfered with or damaged in any manner whatsoever.

(14) Defendants deny, as alleged in Paragraph XIV of [fol. 48] the complaint, that the order of the Illinois Commerce Commission dated October 10, 1944, is invalid upon its face, and that any proceedings pursuant thereto would be futile; that the hearings before the commission would be protracted; and that the plaintiffs would have no legal redress for the recoupment of any expenses to which they would be subjected in the defense of such proceedings. As to the other matters alleged in Paragraph XIV of the complaint, such matters are immaterial, state conclusions of law, and fail to allege facts sufficient to invoke equity jurisdiction, and for these reasons defendants make no answer.

Wherefore, Defendants Pray that this action be dismissed, with costs assessed against plaintiffs.

Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, Doing Business as Daniel F. Rice & Co., a Partnership, (S.) by Irvin Rooks, Lee A. Freeman, Attorneys for Defendants.

[fol. 49] *Duly sworn to by Joseph J. Rice. Jurat omitted in printing.*

Exhibit "A"—Illinois Public Utilities Act with amendments and supplementary enactments.

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDMENT TO COMPLAINT AND THAT PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION BE HEARD UPON THE COMPLAINT AS THUS AMENDED—Filed February 19, 1945

Now Come The Plaintiffs, by their respective attorneys, and move this court for le ve to file instanter an amendment to their complaint herein in the following particulars:

(1) Strike out the verification by D. H. Lipsey.

(2) Insert in lieu thereof verifications on behalf of [fol. 50] each plaintiff, copies of which are attached hereto as Exhibit A.

Plaintiffs further move the court to enter an order that plaintiffs' motion for preliminary injunction be heard on the complaint as thus amended, together with all evidence, affidavits, pleadings and other documents before the court at the time plaintiffs' notion for preliminary injunction is heard.

The grounds of this motion are that justice so requires in order that all issues be fully litigated in this matter.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company; (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company; (S.) Frank W. Sullivan, Leo F. Tierney, Attorneys for Rosenbaum Bros., and Cargill, Inc.

Exhibit "A"—Affidavits of Lipsey, Mayer, Templeton, Enke, Gerstenberg, Egermayer, and Austrian filed as amendment to complaint.

[fol. 54] IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—44-C-1257) • •

ORDER—February 19, 1945

This Cause Coming On To Be Heard, upon the plaintiffs' motion for leave to file an amendment to their complaint herein and for an order that this cause be heard upon the plaintiffs' complaint as thus amended, together with evidence, affidavits, pleadings and other documents before the court at the time plaintiffs' motion for preliminary injunction is heard, and it appearing that justice requires that their motion be granted, and the court being fully advised,

It Is Therefore Ordered:

(1) That the plaintiffs be and hereby are granted leave to file their amendment to the complaint instanter.

(2) That the plaintiffs' motion for preliminary injunction be heard by this court upon the plaintiffs' complaint as thus amended, together with all evidence, affidavits, pleadings and other documents before the court at the time plaintiffs' motion for preliminary injunction is heard.

(3) That all defendants be and hereby are granted leave to file amended answer or amendments to answers previously filed on or before February 26, 1945, provided as to any defendant not filing under this leave, that the answer heretofore filed stand as the answers to the complaint as amended.

Enter:

(S.) Igoe, Judge.

Dated: February 19, 1945.

[fol. 52] IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—44-C-1257) • •

AMENDMENT TO THE COMPLAINT—Filed February 19, 1945

Pursuant to leave granted by order of this court on February 19, 1945, plaintiffs file herein the following amendment to their complaint:

(1) Strike out verification by D. H. Lipsey.

(2) Insert in lieu thereof the verifications on behalf of each plaintiff, which are attached hereto.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company. (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company. (S.) Frank W. Sullivan, Leo F. Tierney, Attorneys for Rosenbaum Bros., and Cargill, Inc.

[fol. 53] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

D. H. Lipsey, being first duly sworn, on oath deposes and says that he is Vice President of Norris Grain Company, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Norris Grain Company are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) D. H. Lipsey.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

Simon Mayer, being first duly sworn, on oath deposes and says that he is Executive Vice-President of Continental Grain Company, a Delaware corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff; that he has read the foregoing complaint, and is familiar with the statements contained therein, and that the

statements contained therein respecting Continental Grain Company are true except those stated to be upon information and belief, and that those he believes to be true.

Simon Mayer.

Subscribed and sworn to before me this 13th day of February, A. D. 1945. Joseph Pinsley, Notary Public. (Seal.)

[fol. 54] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

Wallace Templeton, being first duly sworn, on oath deposes and says that he is President of Santa Fe Elevator Corporation, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of the said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Santa Fe Elevator Corporation are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) Wallace Templeton.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

William Enke, Jr., being first duly sworn, on oath deposes and says that he is Vice President of Stratton Grain Company, a Delaware Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Stratton Grain Com-

pany are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) William Enke, Jr.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

[fol. 55] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

R. A. Gerstenberg, being first duly sworn, on oath deposes and says that he is Secretary of Great Lakes Elevator Corporation, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Great Lakes Elevator Corporation are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) R. A. Gerstenberg.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

UNITED STATES OF AMERICA

Verification

STATE OF ILLINOIS,
County of Cook, ss:

Albert G. Egermayer, being first duly sworn, on oath deposes and says that he is Secretary of Cargill Incorporated, a Delaware Corporation, one of the plaintiffs in the above-entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Cargill Incorporated

[fol. 56] are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) Albert G. Egermayer.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Bessie L. Harman, Notary Public, Hennepin County, Minn. My commission expires Oct. 5, 1951. (Seal.)

UNITED STATES OF AMERICA

Verification

STATE OF ILLINOIS,
County of Cook, ss:

Harvey S. Austrian, being first duly sworn, on oath deposes and says that he is President of Rosenbaum Brothers, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Rosenbaum Brothers are true, except those stated to be upon information and belief, and that those he believes to be true.

(S.) Harvey S. Austrian.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Paul J. Hennig, Notary Public. My commission expires Dec. 18, 1948. (Seal.)

[fol. 57] IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—44-C-1257)

PLAINTIFFS' MOTION FOR LEAVE TO FILE AFFIDAVITS IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION—Filed February 26, 1945

Now Come The Plaintiffs, by their respective attorneys, and move this court for leave to file instanter certain affidavits in support of their motion for preliminary injunction, copies of which affidavits are attached hereto as Exhibit A.

The grounds of this motion are that justice so requires in order that all issues be fully litigated in this matter.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company; (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company; (S.) Frank W. Sullivan, Leo E. Tierney, Attorneys for Rosenbaum Bros., and Cargill, Inc.

(Affidavits Attached But Not Copied.)

[fol. 58] In the District Court of the United States

* * (Caption—44-C-1257) * *

Order—February 26, 1945

This Cause Coming On To Be Heard upon the plaintiffs' motion for leave to file instanter certain affidavits in support of their motion for preliminary injunction, and it appearing that justice requires that their motion be granted, and the court being fully advised,

It Is Therefore Ordered, That the plaintiffs be and hereby are given leave to file instanter their affidavits in support of their motion for preliminary injunction.

Enter: (S.) Igoe, Judge.

Dated: February 26, 1945.

[fol. 59] In the District Court of the United States

* * (Caption—44-C-1257) * *

Affidavits Filed in Support of Plaintiffs' Motion for Preliminary Injunction—Filed February 26, 1945

Pursuant to leave granted by order of this court on February 26, 1945 plaintiffs hereby file herein the attached affidavits in support of their motion for preliminary injunction.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corpo-

ration, Norris Grain Company and Stratton Grain Company; (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company; (S.) Frank W. Sullivan, Leo E. Tierney, Attorneys for Rosenbaum Bros. and Cargill, Inc.

[fol. 60] IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

AFFIDAVIT OF WALLACE TEMPLETON

STATE OF ILLINOIS,
County of Cook, ss:

Wallace Templeton, being first duly sworn, on oath deposes and says that he is President of Santa Fe Elevator Corporation, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Santa Fe Elevator Corporation, operates Santa Fe Elevator in Chicago, Illinois, for the storage of grain; that a federal license was issued to it August 1, 1939 pursuant to the provisions of the United States Warehouse Act, as amended; and that said elevator has a capacity of 1,800,000 bushels of grain.

2. In the twelve month period prior to October 31, 1944, 6,978,449 bushels of grain of the value of $10,173,454.52 were received by said elevator from states other than Illinois, constituting sixty-eight percent (68%) of all grain received by said elevator during that period.

3. During the same period there were shipped from said elevator to states other than Illinois 9,989,260 bushels of grain of the value of $14,032,442.52, constituting ninety-eight and one-half percent (98½%) of all grain shipped from said elevator during that period.

4. On October 31, 1944 said plaintiff had federal warehouse receipts outstanding for grain stored in said Santa

Fe Elevator for 1,296,609 bushels, of which 676,715 bushels were stored for plaintiff's own account.

5. All federal warehouse receipts issued by said plaintiff are on forms furnished and required by the Department of Agriculture, which provide that the grain received by said elevator is "for storage in course of interstate or foreign commerce." A copy of one of said forms is attached hereto as Exhibit "A".

6. During the twelve month period prior to October 31, 1944 said plaintiff stored in Santa Fe Elevator 4,663,469 [fol. 61] bushels of grain for the Government of the United States or agencies thereof.

7. Since August 1, 1939, the date that Santa Fe Elevator Corporation received its federal license, as aforesaid, said elevator has been visited, inspected and examined by representatives appointed under the United States Warehouse Act, as amended, at intervals varying from two to six months.

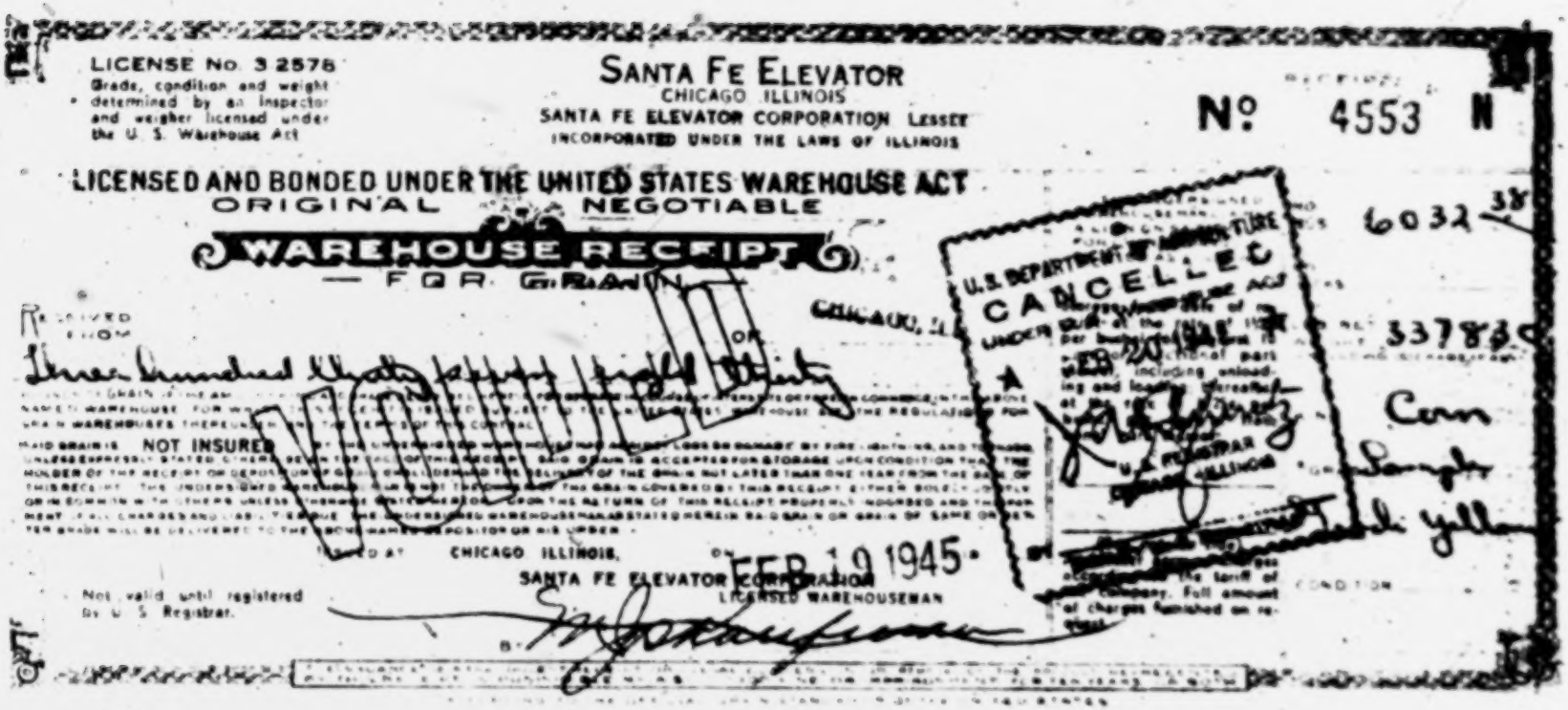
8. August 1, 1939 Santa Fe Elevator Corporation filed with representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it has been accepted by the United States Department of Agriculture.

(S.) Wallace Templeton.

Subscribed and Sworn to before me this 23rd day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

(Here follows 1 Photolithograph, side folios 62-63)

EXHIBIT A.



LICENSE No. 3 2578
Grade, condition and weight determined by an inspector and weigher licensed under the U. S. Warehouse Act

SANTA FE ELEVATOR
CHICAGO ILLINOIS
SANTA FE ELEVATOR CORPORATION LESSEE
INCORPORATED UNDER THE LAWS OF ILLINOIS

No. 4553 N

LICENSED AND BONDED UNDER THE UNITED STATES WAREHOUSE ACT

ORIGINAL NEGOTIABLE

WAREHOUSE RECEIPT
— FOR GRAIN —

6032 38

CANCELLED

337860

Corn

Sample

RECEIVED FROM

Three hundred thirty-seven thousand eight hundred sixty

VOID

PAID GRAIN IS NOT INSURED

CHICAGO ILLINOIS, ON FEB 19 1945.

SANTA FE ELEVATOR CORPORATION
LICENSED WAREHOUSEMAN

Not valid until registered by U. S. Registrar.

62 - 63

[fols. 64-65] IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

AFFIDAVIT OF WILLIAM ENKE, JR.

STATE OF ILLINOIS,
County of Cook, ss:

William Enke, Jr., being first duly sworn, on oath deposes and says that he is Vice President of Stratton Grain Company, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Stratton Grain Comany, operates Dickinson Elevator in Chicago, Illinois, for the storage of grain; that a federal license was issued to it September 16, 1940 pursuant to the provisions of the United States Warehouse Act, as amended; and that said elevator has a capacity of 800,000 bushels of grain.

2. In the twelve month period prior to October 31, 1944, 82.28% of all grain shipped to or from said Dickinson Elevator originated outside of Illinois or was shipped to a destination outside of that state.

3. During the same period a total of 2,185,568 bushels of grain were stored in said elevator of which 1,129,264 bushels were plaintiff's own grain.

4. All federal warehouse receipts issued by said plaintiff are on forms furnished and required by the Department of Agriculture which provide that the grain received by said elevator is "for storage in course of interstate or foreign commerce." A copy of one of said forms is attached hereto as Exhibit "A".

5. During the twelve month period prior to October 31, 1944 said plaintiff stored in Dickinson Elevator 708,019 bushels of grain for the Government of the United States or agencies thereof.

6. Since September 16, 1940, the date that Dickinson Elevator received its federal license, as aforesaid, said elevator has been visited, inspected and examined by representatives appointed under the United States Ware-

house Act, as amended, at intervals varying from two to six months.

7. September 9, 1940 Stratton Grain Company filed with [fol. 66] representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain, and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it has been accepted by the United States Department of Agriculture.

(S.) William Enke, Jr.

Subscribed and Sworn to before me this 23rd day of February, A. D. 1945.

(S.) Virginia B. Crowe, Notary Public. (Seal.)

Exhibit "A"—Warehouse Receipt like Exhibit "A" to Wallace Templeton affidavit except as to name of issuer, date and amount.

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257). * *

AFFIDAVIT OF D. H. LIPSEY

STATE OF ILLINOIS,
County of Cook, ss:

D. H. Lipsey, being first duly sworn, on oath deposes and says that he is Vice President of Norris Grain Company, one of the plaintiffs in the above entitled cause, and has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Norris Grain Company, operates Wabash Elevator in Chicago, Illinois, for the storage of grain; that a federal license was issued to it February 14, 1939 pursuant to the provisions of the United States Warehouse Act, as amended; and that said elevator has a capacity of 1,500,000 bushels of grain.

2. In the twelve month period prior to October 31, 1944 3,432,873 bushels of grain of the value of $5,119,212.00 were received by said elevator from states other than Illinois, constituting sixty-two per cent (62%) of all grain received by said elevator during that period.

[fol. 67] 3. During the same period there were shipped from said elevator to states other than Illinois 4,518,447 bushels of grain of the value of $6,596,482.00, constituting eighty-five per cent (85%) of all grain shipped from said elevator during that period.

4. On October 20, 1944 said plaintiff had outstanding federal warehouse receipts representing a total of 797,579 bushels of grain stored in said Wabash Elevator. Of this total 166,149 bushels represented grain stored for plaintiff's own account in said elevator.

5. All federal warehouse receipts issued by said plaintiff are on forms furnished and required by the Department of Agriculture, which provide that the grain received by said elevator is "for storage in course of interstate or foreign commerce." A copy of one of said forms is attached hereto as Exhibit "A".

6. During the twelve month period prior to October 31, 1944 said plaintiff stored in Wabash Elevator 2,040,788 bushels of grain for the Government of the United States or agencies thereof.

7. Since February 14, 1939, the date that said Wabash Elevator received its federal license, as aforesaid, said elevator has been visited, inspected and examined by representatives appointed under the United States Warehouse Act, as amended, at intervals varying from two to six months.

8. Prior to February 14, 1939 Norris Grain Company filed with representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain, and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it

has been accepted by the United States Department of Agriculture.

(S.) D. H. Lipsey.

Subscribed and Sworn to before me this 23rd day of February, A.D. 1945. (S.) Virginia B. Crowe, Notary Public.

Exhibit "A"—Warehouse Receipt like Exhibit "A" to Wallace Templeton affidavit except as to name of issuer, date and amount.

[fol. 68] In the District Court of the United States

(Caption—44-C-1257)

Affidavit of R. A. Gerstenberg

State of Illinois,
County of Cook, ss:

R. A. Gerstenberg, being first duly sworn, on oath deposes and says that he is Secretary of Great Lakes Elevator Corporation, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter set forth. Affiant further deposes and says that:

1. Said plaintiff, Great Lakes Elevator Corporation, operates the National Elevator in Chicago, Illinois, under a federal license issued to it September 28, 1942 pursuant to the provisions of the United States Warehouse Act, as amended, which license is now in full force and effect.

2. Said National Elevator has a capacity of 900,000 bushels, according to measurement of the United States Department of Agriculture.

3. During the period of one year prior to October 31, 1944, more than ninety-five percent (95%) of all grain received by said elevator was shipped from points outside the State of Illinois. During the same period, more than ninety percent (90%) of the grain shipped from said elevator was forwarded to points outside the State of Illinois.

4. On October 20, 1944 National Elevator had outstanding federal warehouse receipts for 552,200 bushels of grain, none of which was owned by said plaintiff.

5. Each federal warehouse receipt issued by National Elevator is on a form provided by the Department of Agriculture, a copy of which is attached hereto as Exhibit "A", and sets forth thereon that the grain received from the owner by said elevator is "for storage in course of interstate or foreign commerce."

6. Said elevator has stored no grain for the United States Government or agencies thereof, since November 1, 1943.

7. Since September 28, 1942, the date that National Elevator was granted its federal license, until the present [fol. 69] time, it has been visited, inspected and examined by representatives appointed under the United States Warehouse Act, as amended, at intervals of from two to six months.

8. September 1, 1942 Great Lakes Elevator Corporation filed with representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain, and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it has been accepted by the United States Department of Agriculture.

(S.) R. A. Gerstenberg.

Subscribed and Sworn to before me this 23rd day of February, A.D. 1945. (S.) Virginia B. Crane, Notary Public. (Seal.)

Exhibit "A"—Warehouse Receipt like Exhibit "A" to Wallace Templeton affidavit except as to name of issuer, date and amount.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—44-C-1257)

AFFIDAVIT OF SIMON MAYER

Simon Mayer, being first duly sworn, on oath deposes and say- that he is Executive Vice President of Continental Grain Company, one of the plaintiffs in the above-entitled cause, and is authorized to make this affidavit in its behalf.

Affiant states:

That Rock Island Terminal C and D Elevators referred to in the Rice complaint are operated by Continental Grain Company under federal license No. 3-2277. That the initial federal license of said company was procured in February, 1938. That pursuant to the provisions of the United States Warehouse Act said company has on file with the Secretary of Agriculture its schedule of rates and charges both with respect to grain stored in its elevators by Commodity Credit Corporation and that stored by others. That said company has duly filed its bond in accordance with the re- [fol. 70] quirements of the United States Warehouse Act and is entitled to be designated a federally bonded warehouse under said Act.

That Terminal Elevator C above referred to has storage capacity of approximately 3,000,000 bushels and Elevator D approximately 1,000,000 bushels. That for the twelve (12) months ended October 20, 1944, the number of bushels of grain stored in said elevators and the dollar value of said grain was as follows:

Grain	No. of bu.	Dollar value
Wheat	2,211,440	$ 3,648,876
Corn	10,479,545	12,470,659
Oats	1,259,535	755,721
Rye	1,584,923	1,822,662
Barley	31,477	36,199
Soybeans	1,057,883	2,115,767

That the percentage of such grain shipped into said elevators from other states for said period was as follows:

Wheat	92½%
Corn	12 %
Oats	88 %

Rye	100 %
Barley	100 %
Soybeans	45 %

That the percentage of grain during such period received from points in Illinois for shipment to other states was as follows:

Wheat	94%
Corn	79%
Oats	None
Rye	None
Barley	None
Soyabeans	80%

That the number of bushels and dollar value of grain stored and handled in said elevators for the account of Continental Grain Company was as follows:

Grain	No. of bu.	Dollar value
Wheat	776,020	$ 1,280,443
Corn	9,368,624	11,148,662
Oats	1,259,535	755,721
Rye	1,584,923	1,822,662
Barley	31,477	36,199
Soyabeans	1,057,883	2,115,767

[fol. 71] That the number of bushels and dollar value of grain stored and delivered for the account of Commodity Credit Corporation during said period was as follows:

Grain	No. of bu.	Dollar value
Wheat	1,335,342	$2,203,314
Corn	37,041	44,079

That as at October 20, 1944 there were outstanding warehouse receipts issued by said company evidencing the following number of bushels of grain:

Grain	No. of bu.
Corn	757,826
Oats	9,727
Wheat	117,822
Rye	1,400,093

That of said issued and outstanding warehouse receipts at that date Continental Grain Company was shown in said

receipts (as required by the United States Warehouse Act) to be the owner of grain to the following extent:

Grain	No. of bu.
Corn	662,875
Oats	9,727
Wheat	27,975

That as at said last mentioned date there was pledged as collateral for loans warehouse receipts for 602,444 bushels of corn stored in said company's warehouses, which said receipts showed on their face that Continental Grain Company was the owner of the grain evidenced by said receipts. That for the twelve months ended October 20, 1944, the dollar value of warehouse receipts issued by Continental Grain Company (in which said Company is shown to be the owner of the grain evidenced thereby) which were pledged as collateral securities for loans exceeded $7,500,000.

Affiant further states that approximately every three months between 6 to 9 representatives of the United States Department of Agriculture examined the elevators of said company and the grain stored therein and otherwise checked the said company in regard to compliance with the provisions of the United States Warehouse Act and regulations thereunder.

Further affiant sayeth not.

Simon Mayer.

Subscribed and sworn to before me this 23rd day of February, 1945. Joseph Prusby, Notary Public. (Seal.)

[fol. 72] In the District Court of the United States

[Caption—44-C-1257]

Affidavit of M. R. Glaser

State of Illinois,
County of Cook, ss:

M. R. Glaser, being first duly sworn, on oath deposes and says that he is a Vice President of Rosenbaum Brothers, an Illinois corporation, one of the plaintiffs in the

above-captioned case, and that he has personal knowledge of the facts hereinafter stated. Affiant further says that:

1. Said Rosenbaum Brothers leases a grain elevator, known as the "Calumet Elevator", located at 102nd Street and the Calumet River, in Chicago, Illinois, and, since July 1, 1937, has operated said elevator as a public warehouse, for the storage of grain, under license issued pursuant to the provisions of the United States Warehouse Act and the Rules and Regulations promulgated thereunder.

2. The rated capacity of said Elevator is 2,800,000 bushels. During the twelve-month period prior to October 31, 1944, there were placed in store in said Calumet Elevator a total of 17,943,223 bushels of grain of all kinds, and 17,692,913 bushels of grain were shipped from said Elevator. It is estimated that of said grain approximately 7 per cent was received from and shipped to points in the State of Illinois and the balance, or 93 per cent, was received from and shipped to points in States other than Illinois.

3. Of the amount of grain so shipped, 8,914,870 bushels were shipped on account of the Commodity Credit Corporation, leaving a balance of 8,778,043 bushels, which was shipped for the account of Rosenbaum Brothers and others.

4. On October 31, 1944, this plaintiff had outstanding negotiable warehouse receipts representing grain stored in said Elevator respecting 1,913,168 bushels of grain, of which 703,241 bushels were owned by Commodity Credit Corporation.

5. All warehouse receipts issued by this plaintiff respecting grain in store at said Elevator contain a statement that the related grain was received "for storage in the course of interstate commerce". The said Elevator has been inspected by representatives of the federal government at irregular intervals, varying from two to four [fol. 73] months. It is the understanding of this affiant that the said Elevator, during the period it has been operated under federal license, has not been inspected by representatives of the State of Illinois. This plaintiff has kept on file with the Secretary of Agriculture, or his successor, schedules or tariffs of rates and charges for the handling and storage of grain ever since the issuance of its federal license. All changes in said tariffs or schedules have also been

filed with said Secretary or his successors and copies of such tariffs and schedules, and all changes and amendments therein, have been posted by this plaintiff in a prominent place for public inspection at said Elevator.

M. R. Glaser.

Subscribed and sworn to before me this 23rd day of February, 1945. Paul J. Hennig, Notary Public. My commission expires Dec. 18, 1948. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES

[Caption—44-C-1257]

AFFIDAVIT OF JOSEPH E. BAILEY

STATE OF MINNESOTA,
County of Hennepin, ss:

Joseph E. Bailey, being first duly sworn, on oath deposes and says that he is an Assistant Vice President of Cargill, Incorporated, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Cargill, Incorporated, owns the grain elevator known as "C. & N. W. Terminal Elevator & Annex" located at Chicago, Illinois, and during the entire calendar year 1944 operated, and now operates said C. & N. W. Terminal Elevator & Annex under a license issued July 1, 1937, pursuant to the provisions of the United States Warehouse Act and the rules and regulations promulgated thereunder. Said C. & N. W. Terminal Elevator & Annex has a capacity of approximately 9,300,000 bushels of grain.

[fol. 74] 2. During the calendar year 1944 there were placed in store in said C. & N. W. Terminal Elevator & Annex a total of 26,685,000 bushels (to the nearest thousand) of grain of all kinds; that of said 26,685,000 bushels, not less than eighty-five (85%) per cent thereof was shipped to, and received at said C. & N. W. Terminal Elevator & Annex from states other than Illinois.

3. That during the calendar year 1944 there were loaded out and shipped from said C. & N. W. Terminal Elevator & Annex a total of 26,731,000 bushels (to the nearest thousand) of all kinds of grain; that of said total, not less than eighty-two (82%) per cent of all said grain was shipped from said C. & N. W. Terminal Elevator & Annex to states other than Illinois.

4. Said plaintiff, Cargill, Incorporated, now leases and during the entire calendar year 1944, and prior thereto, was the owner of the grain elevator situated near East St. Louis, Illinois, and known as "Cargill East St. Louis Elevator 'R' "; that said plaintiff now operates and during all of the calendar year 1944 did operate said Cargill East St. Louis Elevator "R" under a license issued January 10, 1942, pursuant to the provisions of the United States Warehouse Act and the rules and regulations promulgated thereunder. Said Cargill East St. Louis Elevator "R" has a capacity of approximately 4,000,000 bushels of grain.

5. During the calendar year 1944 there were placed in store in said Cargill East St. Louis Elevator "R" a total of 7,210,000 bushels (to the nearest thousand) of grain of all kinds; that of said 7,210,000 bushels, not less than sixty-five (65%) per cent thereof was shipped to, and received at said Cargill East St. Louis Elevator "R" from states other than Illinois.

6. That during the calendar year 1944 there were loaded out and shipped from said Cargill East St. Louis Elevator "R" a total of 6,509,000 bushels (to the nearest thousand) of all kinds of grain; that of said total, not less than seventy (70%) per cent of all said grain was shipped from said Cargill East St. Louis Elevator "R" to states other than Illinois.

7. All warehouse receipts issued by said plaintiff covering grain stored in either of said elevators bear the statement on the face thereof that the grain received by said [fol. 75] elevators, respectively, was received "for storage in the course of interstate or foreign commerce." Both said elevators from the dates of their respective licenses, have been inspected and examined by persons authorized to do so under and pursuant to the United States Ware-

house Act, at intervals of from two to four months; and neither of said elevators has ever been inspected or examined by any representative of the State of Illinois at any time after the issuance of the licenses covering said elevators, respectively. All schedules or tariffs of rates and charges for the storage and handling of grain in and at each of said elevators since the dates of issuance of their respective licenses mentioned above, have been filed with and approved by the Secretary of Agriculture of the United States, and each change or amendment in any of said tariffs or schedules has likewise been filed with and approved by said secretary; said plaintiff has posted each such tariff or schedule of rates and charges and all changes and amendment therein and thereto in a prominent place in the respective elevator to which it applied.

8. On December 31, 1944 said plaintiff had outstanding warehouse receipts for grain stored in said C. & N. W. Terminal Elevator & Annex covering 8,463,994 bushels of grain, of which 1,670,031 bushels were owned by said plaintiff. On December 31, 1944 said plaintiff had outstanding warehouse receipts for grain stored in Cargill East St. Louis Elevator "R" covering 2,523,147 bushels of which 555,566 bushels were owned by said plaintiff.

9. During the calendar year 1944, said plaintiff stored in said C. & N. W. Terminal Elevator & Annex 3,144,182 bushels of grain for the United States or agencies thereof; that during the calendar year 1944 said plaintiff stored in said Cargill East St. Louis Elevator "R" 4,111,757 bushels of grain for the United States or agencies thereof.

(Signed) Joseph E. Bailey.

Subscribed and sworn to before me this 21st day of February, 1945. (Signed) Grace M. Olson, Notary Public, Hennepin County, Minn. My Commission Expires Oct. 5th, 1951. (Notarial Seal.)

[fol. 76] And afterwards on, to-wit, the 2nd day of March 1945 there were filed in the Clerk's office of said Court certain Affidavits On Behalf Of Illinois Commerce Com-

mission and Members Thereof, And on Behalf of the Attorney General in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES

[Caption—44-C-1257]

AFFIDAVIT ON BEHALF OF ILLINOIS COMMERCE COMMISSION AND MEMBERS THEREOF, AND ON BEHALF OF THE ATTORNEY GENERAL

STATE OF ILLINOIS,
County of Cook, ss:

Joseph F. Gubbins, being first duly sworn, on oath deposes and says that he is Secretary of the Illinois Commerce Commission of the State of Illinois, and keeper of the records of said commission.

Affiant states that on December 15, 1944, a verified petition was filed by Cargill, Inc., with the Illinois Commerce Commission for consent to and approval of the sale of a grain elevator and certain adjoining lands near the city of East St. Louis, and for the leasing of said property by the petitioner from the proposed purchaser. This case was duly docketed as Illinois Commerce Commission Docket No. 32523. A true and correct copy of said verified petition (without the attached exhibits) is attached hereto as Exhibit 1 and made a part of this affidavit.

Affiant further states that hearings were held before a duly authorized examiner of the Illinois Commerce Commission at which the applicant, Cargill, Inc. presented evidence in support of said verified petition, and on December 28, 1944, the commission duly entered an order consenting to and approving the sale of said grain elevator and adjoining lands, and its lease-back. A true, correct and [fol. 77] complete copy of the order made and entered of record by the Illinois Commerce Commission is attached hereto as Exhibit 2 and made a part of this affidavit.

Subscribed and sworn to before me this 27th day of February, A. D. 1945. Ella E. Mahan, Notary Public. My commission expires Jan. 26, 1949. (Seal.)

EXHIBIT 1

State of Illinois

Illinois Commerce Commission

(Stamp) Received Dec 15 1944 Illinois Commerce Commission Chicago Illinois.

Docket No. 32523

In the Matter of the Application of Cargill, Incorporated for Consent to and Approval of the Sale of a Grain Elevator and Certain Adjoining Lands and Easements in the Town of Centerville, Near the City of East St. Louis, in the County of St. Clair, Illinois, and for the Leasing of Said Property by Petitioner From the Proposed Purchaser

Petition

To the Honorable Illinois Commerce Commission:

Your Petitioner herein, Cargill, Incorporated, hereinafter sometimes referred to as "Cargill", hereby respectfully shows to the Commission:

1. Your Petitioner is a corporation organized and existing under the laws of the State of Delaware, duly authorized to transact business in the State of Illinois, and is the purchaser, under contract, from Alton and Southern Railroad of a certain grain elevator building and other im- [fol. 78] provements, the land upon which the same are situated and certain easements used or useful in connection therewith, all situated in the Town of Centerville, near the City of East St. Louis, in St. Clair County, Illinois, and commonly known as Cargill East St. Louis Elevator "R". A full description of said land and easements is contained in Exhibit "A", which forms a part of Exhibit "1", hereto attached and made a part hereof. All of said land, easements and improvements thereof are hereinafter sometimes referred to as "said property". A plat, showing in the shaded portions thereof the several tracts of land upon which said improvements are situated and to which said easements relate is hereto attached, marked Exhibit "2", and made a part hereof. All of the terms and conditions of the transaction above mentioned, whereby said

property is being purchased by Cargill from Alton and Southern Railroad are contained in that certain Purchase Agreement dated July 24, 1940, a Supplemental Agreement dated May 26, 1941, and a Second Supplemental Agreement dated January 3, 1942, all of which said agreements have heretofore been submitted to the Commission, and said agreements and the transaction evidenced thereby have been approved by the Commission by its orders, all bearing Docket No. 29012 and being dated, respectively, July 25, 1940, June 3, 1941 and January 6, 1942.

2. Cargill now proposes to sell said property to Cahokia Elevator Co., a Delaware corporation, for whose benefit a bid in the sum of Five Hundred Thousand Dollars ($500,000), to be paid in cash has been made and has been accepted by Cargill, subject to the consent and approval of this Commission. The full terms and conditions of said proposed sale and purchase transaction are contained in a statement titled "General Information and Terms, Conditions and Specifications for Bids to Purchase Cargill East St. Louis Elevator 'R' " (dated October 11, 1944), the bid of Joseph M. Sinaiko, Isaac D. Sinaiko and Carl A. Sorling (dated November 17, 1944) and the letter of acceptance of said bid by Cargill (dated December 4, 1944). A copy of said statement, bid and letter of acceptance are hereto attached, made a part hereof, and together designated Exhibit "1".

3. There remains unpaid under the agreements referred to in paragraph 1 above, the principal amount of Three Hundred Twenty-five Thousand Dollars ($325,000) which, [fol. 79] prior to conveyance of said property by Cargill to said proposed purchaser, will be paid in full by Cargill, together with all accrued interest and other amounts, if any, owing to said Alton and Southern Railroad. The original, full purchase price of said property of Five Hundred Thousand Dollars ($500,000) is payable under said agreement in equal quarterly installments of Twelve Thousand Five Hundred Dollars ($12,500), each, payable on the 1st day of the months of January, April, July, and October, over and during the period from July 1, 1941 to April 1, 1951, inclusive.

4. Cargill now operates, and since Jan. 10, 1942 has operated all or a part of said grain elevator as a licensed pub-

lic grain warehouse under the United States Warehouse Act, and is defined as a public utility in Section 10 of the I" ois Public Utilities Act.

5. (a) The said grain elevator was constructed by Cargill for Alton and Southern Railroad under and pursuant to a Construction Agreement dated July 24, 1940, which required Cargill to construct the said elevator and to deliver same to said Railroad in completed form (except for railroad tracks) and ready for operation for a price not to exceed the sum of Four Hundred Sixty-six Thousand Dollars ($466,000). Under said Construction Agreement the Railroad was required to pay, and has paid Cargill the full sum of Four Hundred Sixty-six Thousand Dollars ($466,000) for the construction of said grain elevator.

(b) However, due to unforeseen foundation difficulties and the then existing labor situation in the East St. Louis area, the actual cost of construction of said grain elevator to Cargill was greatly in excess of the sum of Four Hundred Sixty-six Thousand Dollars ($466,000), the amount reimbursable to Cargill under said Construction Agreement, and Cargill thereby sustained a substantial reduction in its working capital, which is not received in the value of the property.

(c) Said grain elevator was substantially completed in the fall of 1942. In 1943, it became advisable for Cargill to purchase on contract or on mortgage security four plants, consisting of one large grain elevator, the C. & N. W. Terminal Elevator located at Chicago, Illinois, at a price of One Million Seven Hundred Eighty-three Thousand Five Hundred Forty-five Dollars ($1,783,545); a com- [fol. 80] bination soybean crushing, feed mill and grain storage plant at Cedar Rapids, Iowa for the sum of Three Hundred Thousand Dollars ($300,000); a combination soybean crushing, feed mill and grain storage plant at Ft. Dodge, Iowa for the sum of Five Hundred Thousand Dollars ($500,000); and a combination soybean crushing and grain storage plant at Springfield, Illinois for the sum of Six Hundred Thousand Dollars ($600,000). The total investment or commitment in these four properties is Three Million One Hundred Eighty-three Thousand Five Hundred Forty-five Dollars ($3,183,545), and the purchase of these plants was required by expediency in the case of the

grain elevator at Chicago, and by a need for diversification of Cargill's business in the other cases.

(d) In order to maintain a desirable relationship between working capital and investment in fixed assets, as well as to provide adequate working capital for expanded and diversified operations, it is deemed in the best interest of Cargill (as a grain dealer and as a public grain warehouseman) and in the public interest to consummate the proposed sale for which approval is hereby sought.

6. Cargill asserts that the proposed sale price represents the present market value of said property and that the terms and conditions of the proposed sale are fair and reasonable. Cargill further shows the Commission that, in an effort to obtain the best possible price and establish the market value of said property, it caused an advertisement (a copy of which is hereto attached, marked Exhibit "3", and made a part hereof) soliciting bids for the purchase of said property to be published in the following publications on the dates indicated:

Publication	Publication Dates
Chicago Journal of Commerce (Financial—commercial daily)	November 1, 7 and 10, 1944.
The Northwestern Miller (Weekly trade journal)	October 18 and 25, and November 1, 1944.
The Southwestern Miller (Weekly trade journal)	October 17, 24 and 31, 1944.
The National Grain Journal (Monthly trade journal)	October, 1944 issue.
The Grain & Feed Review (Monthly trade journal)	November, 1944 issue.
St. Clair County Record (Weekly legal newspaper)	October 27, 1944.

[fol. 81] In response to said advertisement the bid above mentioned, made for the benefit of said Cahokia Elevator Co., the proposed purchaser, in the sum of Five Hundred Thousand Dollars ($500,000) and one other bid in a substantially lesser sum, were received. Petitioner submits that, in view of the wide publicity given the proposed sale and the bids submitted on said property, the bid is a fair

measure of the present market value of said property. Further evidences of the market value of said property are (a) the purchase price of Five Hundred Thousand Dollars ($500,000) agreed to be paid by Cargill to Alton and Southern Railroad for said property, as shown by said Purchase Agreement dated July 24, 1940, and (b) the price of Four Hundred Sixty-six Thousand Dollars ($466,000), for which Cargill agreed to build said grain elevator for Alton and Southern Railroad.

7. Your Petitioner alleges and shows to the Commission that, by virtue of the facts asserted in this Petition and in the exhibits attached hereto, the public will be convenienced by the purchase and sale of the property as aforesaid, upon the terms and in the manner in this Petition and exhibits set forth.

8. Following the acceptance of the bid made for the benefit of said Cahokia Elevator Co., referred to in paragraph 2 above, said Cahokia Elevator Co. offered to lease said property to Cargill upon fair and reasonable terms, subject to the approval of this Commission. Thereafter, terms were agreed upon as shown in Exhibit "4" hereto attached and made a part hereof, which said Exhibit "4" is a true and full copy of the lease proposed to be entered into between Cargill and said Cahokia Elevator Co., consent to approval of which by this Commission is hereby applied for.

9. While, as hereinabove set out in paragraph 5, it is advisable for Cargill to consummate the proposed sale, said grain elevator is nevertheless of substantial value to the public in that said elevator now stores and handles, has stored and handled, and may be expected to store and handle large quantities of grain for the public generally, for agencies and instrumentalities of the United States government, as well as for Cargill. Said grain elevator is a facility of considerable size, having a capacity in excess of four million bushels. For the foregoing reasons, Cargill represents that the proposed lease of said prop- [fol. 82] erty to Cargill is in the public interest, in that it will permit the continued operation of the facility as a public grain storage and handling plant. It is Cargill's intention to continue the operation of said elevator property

as a public licensed warehouse and to continue to render the same service to the public as heretofore.

Wherefore, Your Petitioner respectfully requests this Commission to enter its order herein, consenting to and approving:

1. The sale and conveyance by Cargill of the aforesaid property and of all right, title and interest of Cargill in and to said easements to Cahokia Elevator Co., upon the terms and conditions set out in Exhibit "1" hereto attached, and

2. The lease by Cargill of said property from said Cahokia Elevator Co. upon the terms and conditions set out in Exhibit "4" hereto attached, and

3. The doing of all acts and things by Cargill and said Cahokia Elevator Co. necessary to carry out and consummate said proposed purchase, sale and lease.

Dated: December 12, 1944.

Cargill, Incorporated, (Signed) by John H. MacMillan, Jr., President; (S.) Albert G. Egermayer, Secretary.

STATE OF MINNESOTA,
County of Hennepin, ss:

John H. MacMillan, Jr. and Albert G. Egermayer, each being first duly sworn, on oath depose and say that they are, respectively, the President and Secretary of the Petitioner named in the foregoing Petition; that they are authorized to make this affidavit and verification in behalf of said Petitioner; that they have read the foregoing Petition and know the contents thereof, and that the same is true to the best of their knowledge and belief.

(Signed) John H. MacMillan, Jr., Albert G. Egermayer.

Subscribed and sworn to before me this 12th day of December, 1944. (Signed) Bessie L. Harman, Notary Public. My Commission Expires Oct. 5th, 1951. (Notarial Seal.)

[fol. 83] EXHIBIT 2

State of Illinois

Illinois Commerce Commission

(Caption—32523)

Order

By the Commission:

On the 15th day of December, 1944, pursuant to leave granted by the Commission, a hearing was had on a petition filed instanter by Cargill, Inc., a Delaware Corporation (hereinafter sometimes called "Cargill"), praying therein for an order by the Commission consenting to and approving the sale and conveyance by said Cargill, Inc. of a certain grain elevator and certain adjoining lands and easements situated in the Town of Centerville, near the City of East St. Louis, in St. Clair County, Illinois, and commonly known as "Cargill East St. Louis Elevator 'R' ", all of which is more particularly described in exhibits attached to the aforesaid verified petition. Upon leave granted Cahokia Elevator Company, a Delaware Corporation (hereinafter sometimes called "Cahokia"), the purchaser of the premises hereinbefore mentioned, filed a concurring verified petition in this case praying therein for an order by this Commission consenting to and approving a lease of the premises hereinbefore mentioned by said Cahokia Elevator Company to Cargill, Inc., a copy of which is marked Exhibit 4 and attached to the verified petition filed by Cargill, Inc. in this case on the 15th day of December, 1944.

It appears from the record in this case that all of the terms and conditions of the transaction whereunder Cargill, Inc. secured an interest in the premises hereinbefore mentioned from the Alton and Southern Railroad have been approved by this Commission in case bearing Illinois Commerce Commission docket No. 29012 under orders entered dated July 25, 1940, June 3, 1941, and January 6, 1942, and that the unpaid balance of $325,000.00 of the original purchase price will be paid to the said Alton and Southern Railroad prior to the conveyance of the premises in question by Cargill, Inc. to Cahokia Elevator Company.

[fol. 84] It further appears that Cargill, Inc. now proposes to sell the said premises to Cahokia Elevator Com-

pany, a Delaware Corporation, for $500,000.00; that the said purchase price was the best price petitioner could obtain for the premises in question following a procedure of competitive bidding; that petitioner offered for sale the property publicly by a solicitation of bids published in the following publications on the dates indicated:

Publication	Publication Dates
Chicago Journal of Commerce (Financial—commercial daily)	November 1, 7 and 10, 1944.
The Northwestern Miller (Weekly trade journal)	October 18 and 25, and November 1, 1944.
The Southwestern Miller (Weekly trade journal)	October 17, 24 and 31, 1944.
The National Grain Journal (Monthly trade journal)	October, 1944 issue.
The Grain & Feed Review (Monthly trade journal)	November, 1944 issue.
St. Clair County Record (Weekly legal newspaper)	October 27, 1944.

It further appears that Cargill, Inc. proposes to lease the premises in question from Cahokia Elevator Company for a term of ten (10) years commencing December 30, 1944, at and for an agreed cash rental of $65,000.00 per annum, payable in equal quarterly installments of $16,250.00, the first of which installments is to become payable on December 30, 1944; that the lessee is to pay all taxes and assessments, both general and special, levied upon or assessed against the property in question for the years 1945 to 1954, both inclusive, and to pay for fire and extended coverage insurance on the said premises in the amount of $500,000.00, or such maximum lesser amount equal to the appraised replacement value of the improvements, machinery and equipment constituting a part of said property.

It further appears that the proposed sale and lease of the premises in question will improve the cash position of Cargill, Inc., and thus aid it in its borrowing from banks in the conduct of its business as a grain dealer and a public grain warehouseman; that the consummation of the proposed sale and lease will not adversely affect the public [fol. 85] service in that Cargill, Inc. proposes to carry on its public warehouse business under the proposed lease as at present under its ownership of the premises in question

without interference to the public in so far as the movement of grain in and out of said elevator property is concerned.

It further appears that Cargill, Inc. acknowledges that the consent and approval by the Commission of the reasonableness of the rental to be paid by Cargill, Inc. under the proposed lease would not be deemed or construed by said Cargill to be a conclusive finding of fact binding upon the Commission in any controversy involving the reasonableness of the rates charged by Cargill for the storage of grain upon the premises involved herein.

The Commission having considered the evidence, both oral and documentary, adduced at the aforesaid hearing in this case, the verified petition filed by Cargill, Inc. and the concurring petition filed by Cahokia Elevator Company, as well as certain instruments attached to the said verified petition, is of the opinion and finds:

(1) that Cargill, Incorporated now operates, and since January 10, 1942, has operated, all or a part of said grain elevator as a licensed public grain warehouse under the United States Warehouse Act, and is defined as a public utility in Section 10 of the Illinois Public Utilities Act;

(2) that this Commission has jurisdiction of the parties to this proceeding and of the subject matter hereinunder consideration;

(3) that Cargill, Incorporated is the owner of the premises hereinbefore referred to and more particularly described in certain instruments attached to the verified petition filed in this case by Cargill, Incorporated, and that the sale and conveyance of said premises, as proposed in this case, will not interfere with the operation of said Cargill, Incorporated in the conduct of its grain warehousing business or with its duties to the public, if any, in the conduct of such grain warehousing business;

(4) that the consideration for the proposed sale and conveyance of the premises as aforesaid is $500,000.00, which sum, under the method of sale used by said Cargill, Incorporated, indicates the present fair cash market value of the said premises in question;

(5) that the Commission should consent to and approve the sale and conveyance of the real property and improve-
[fol. 86] ments specified in the aforesaid verified petition,

as well as all right, title and interest of Cargill, Incorporated, in and to the aforesaid easements, all in accordance with the offer and acceptance documents filed in this case, to Cahokia Elevator Company upon the terms and conditions set forth in the said exhibits attached to the aforesaid verified petition and filed in this case;

(6) that the consent and approval by the Commission of the sale and lease hereinunder consideration should not be deemed or construed by the parties hereto to be binding upon the Commission in any controversy before the Commission involving rates for the storage of grain;

(7) that the Commission should consent to and approve the lease by Cahokia Elevator Company to Cargill, Incorporated of the aforesaid premises.

It Is Therefore Ordered by the Illinois Commerce Commission that Cargill, Incorporated be, and it is hereby, authorized to sell and convey to Cahokia Elevator Company, a certain grain elevator and certain adjoining lands and easements situated in the Town of Centerville, near the City of East St. Louis, in St. Clair County, Illinois, and commonly known as "Cargill East St. Louis Elevator 'R' ", and more particularly described in an exhibit attached to the verified petition filed in this case on the 15th day of December, 1944, and to receive therefor the sum of Five Hundred Thousand Dollars ($500,000.00), and that said sale and conveyance be, and the same is hereby, consented to and approved.

It Is Further Ordered that the Commission hereby consents to and approves the lease of the premises hereinbefore referred to by Cahokia Elevator Company to Cargill, Incorporated, upon the terms and conditions set forth in a copy of said lease and other instruments filed in the record of this case.

It Is Further Ordered that Cargill, Incorporated and Cahokia Elevator Company be, and they are hereby, authorized to execute all instruments and perform all acts necessary to give effect to the transactions covered by this order, and that the execution of all of said instruments and the performance of all of said acts be, and the same are hereby, consented to and approved.

By order of the Commission at Chicago, Illinois, this 28th day of December, 1944.

(Signed) Joseph F. Gubbins, Secretary. (Seal.)

[fol. 87] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL A. SORLING—Filed March 5, 1945

STATE OF ILLINOIS,
County of Sangamon, ss:

Carl A. Sorling, being first duly sworn, on oath deposes and says:

1. That he is a resident of the City of Springfield in the County and State aforesaid and a practicing member of the bar of said state.

2. That he is familiar with the proceedings before the Illinois Commerce Commission in Docket No. 32,523 "In the Matter of the Application of Cargill, Incorporated, for Consent to and Approval of the Sale of a certain Grain Elevator in the Town of Centerville, St. Clair County, Illinois", and that he represented Cahokia Elevator Co., the proposed buyer of the premises, in that proceeding.

3. That in the contract of sale respecting the said elevator premises this affiant insisted upon the inclusion therein of an obligation on the part of the seller, Cargill, Incorporated, to secure the consent of Illinois Commerce Commission to the proposed sale, and that he insisted upon such inclusion because the contract of sale required that the seller deliver to the buyer a certificate of title, to be issued by St. Clair Guaranty and Title Co., of East St. Louis, Illinois, and this affiant was aware of the practice of Illinois title guaranty companies to require Illinois Commerce Commission approval of sales of real property by any utility.

4. That in the course of the discussion between this affiant and Albert G. Egermayer, secretary of, and counsel for, the seller, it was stated by Mr. Egermayer that the seller held a federal license for the operation of the elevator in question and that litigation was pending in the United States District Court at Chicago, Illinois upon the question as to whether Illinois Commerce Commission had any jurisdiction in the premises, but inasmuch as it was desired to consummate the purchase of the property before December 30, 1944, this affiant could not await the settlement of the controverted question, and, therefore, continued to insist upon the insertion in the contract of the requirement that

[fol. 88] the seller secure the consent of Illinois Commerce Commission to the transaction.

5. This affidavit is made by the undersigned in the knowledge that it is intended for use in support of a motion for a temporary injunction in the cause of "Great Lakes Elevator Corporation, et al., *vs.* Illinois Commerce Commission, et al., pending in the District Court of the United States, Northern District of Illinois, Eastern Division, as Civil Action No. 44 C 1257.

Carl A. Sorling.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. Helen Marx, Notary Public. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 44 C 1253

BOARD OF TRADE OF CITY OF CHICAGO

vs.

ILLINOIS COMMERCE COMMISSION, et al.

Civil Action No. 44 C 1257

GREAT LAKES ELEVATOR CORPORATION, et al.,

vs.

ILLINOIS COMMERCE COMMISSION, et al.

MEMORANDUM OPINION—Filed June 15, 1945

In No. 1257 plaintiffs who are licensed warehousemen under the United States Warehouse Act seek to enjoin the Illinois Commerce Commission from hearing a complaint which charges plaintiffs with acts in violation of the con- [fol. 89] stitution and regulatory statutes of Illinois. The Commission overruled a motion to dismiss, and set the case for hearing. Plaintiffs contend that the Illinois constitutional and statutory provisions have been so completely superseded by the Federal Act that the Commission may not even hold a hearing, and even though the Commission after the hearing may not take any action in conflict with

the authority conferred upon the Secretary of Agriculture by the Federal law.

In No. 1253, plaintiff relies upon the Commodities Exchange Act as superseding the authority of the Commission.

In order to sustain the injunctions prayed for the court must decide that the Federal Law has completely extinguished State investigation and regulation in the entire field in which the Commission has annouced its intention to hold a hearing.

The State of Illinois has enacted the Illinois Grain Warehouse Act. By its Public Utilities Act of 1913 and subsequent acts, public warehouses for the storage of grain are public utilities and are subject to the comprehensive regulatory provisions of that law, including court review. Control over such warehouses has been exercised by most of the States. The Supreme Court of the United States has decided that regulation of such warehouses engaged in interstate commerce does not amount to regulation of such commerce, in the absence of conflict with Federal legislation.

The Federal Warehouse Act of 1916 does not purport to be a utility regulatory act. It is aimed at fraudulent practices in connection with warehouse receipts for agricultural products which are stored for interstate commerce. Its provisions are applicable only to those who seek and obtain a government license. The act does not provide a method for establishment of just and reasonable rates or the elimination of discriminatory practices. The only remedy under that act is revocation of the license. The act does not impair or limit the effect of any State law relating to warehouse or warehousemen.

Amendments to that act have not changed it materially. The 1931 amendment does not add to it any of the regulatory provisions usually found in regulatory statutes. It does not fix standards, require findings, or provide for judicial review. The amendment to section 29 does not in my opinion transform the statute into a comprehensive [fol. 90] Federal plan for the regulation of these licensed utilities, and does not operate to supersede the provisions of the Illinois law so completely that the Commission may not even make an investigation of any of the matters covered by the complaint before it.

I recognize that this is a field in which widely different views have been expressed, but the rule which seems to me

to be applicable is that it must clearly appear that the Federal provisions are inconsistent with those of the State. The amendment does not say that State officials may not proceed under State laws without the approval of the Secretary; on the contrary, it authorizes the Secretary in his discretion to cooperate with the State officials. Congress has not provided a substitute for the regulatory statutes of the State. The Secretary has not been authorized to prescribe rates; the penalties were not extended to cover discriminatory practices, and the Secretary can only revoke the license. That official is given no direct authority over the financial transactions and security issues of the licensee. There is no safeguard against improper abandonment of the public service. There are no provisions for complaints, hearings, findings, and court review. In all material respects, the powers of the Secretary are just as they were before the amendment of section 29. Forfeiture of the license gives only negative protection to the public. The State can still fix reasonable rates and prevent discriminatory rates and protect against improper financial transactions and security issues. In my opinion, there is no direct conflict between a licensing system to protect against fraudulent warehouse receipts, and utility regulation to preserve the service in the public interest, and it does not clearly appear that the State law has been completely superseded as to all of the matters covered by the complaint. The same principles apply to the suit based upon the Commodities Exchange Act.

Orders and findings may be presented denying the injunctions.

Michael L. Igoe, Judge United States District Court.

Dated, June 15th, 1945.

[fol. 91] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action. No. 44 C 1257. Equitable Relief Sought

GREAT LAKES ELEVATOR CORPORATION, et al., Plaintiffs,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants

JUDGMENT—June 26, 1945

This cause coming on to be heard on the verified complaint of the plaintiff herein, and the verified answers of Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Company, a partnership, defendants herein, and upon the motion of defendants, the Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, members of said commission, and George F. Barrett, Attorney General of the State of Illinois, to strike the plaintiffs' complaint and dismiss the cause, and upon the affidavits in support of said complaint filed herein by the plaintiffs, and upon the affidavits filed by the defendants herein, and upon the motion of plaintiffs for an injunction in accordance with the plaintiffs' complaint, and upon the verified answers of the defendants to said motion, the court being fully advised in the premises, and having heard the arguments of counsel, and having considered the briefs filed by the parties herein and by the War Food Administrator, United States Department of Agriculture, as amicus curiae, and the court having rendered its memorandum opinion which [fol. 92] is attached hereto and made a part hereof, does hereby find:

1. The facts and law applicable thereto to be as contained in the memorandum of opinion attached hereto.

2. Plaintiffs are public utilities within the meaning of and subject to the Illinois Public Utility Act.

3. Plaintiffs possess federal licenses issued pursuant to the provisions of the United States Warehouse Act, as amended.

4. The United States Warehouse Act, as amended, is not a utility regulatory act, but is a limited and circumscribed

exercise of federal control over warehousemen who voluntarily seek and obtain a federal license.

5. The United States Warehouse Act, as amended, does not authorize the Secretary of Agriculture to:

(a) Fix or establish just and reasonable storage rates and charges for public storage of grain.

(b) Prevent discriminatory rates and practices of grain warehousemen.

(c) Prevent the abandonment of public grain warehousing service and capacity.

(d) Approve or disapprove financial transactions, or the issuance of securities.

As to such specific subject matters of regulation, the field is not occupied by the federal government; the provisions of the laws and statutes of the State of Illinois with respect thereto are not superseded; and the jurisdiction of the Illinois Commerce Commission over plaintiffs with respect thereto is not preempted or superseded by the United States Warehouse Act, as amended, but such regulation exists as a valid exercise of state authority.

6. The jurisdiction of the Illinois Commerce Commission over plaintiffs is not preempted or superseded by the United States Warehouse Act, as amended, with respect to the matters and issues involved in the complaint of *Daniel F. Rice & Co.* v. *Chicago Grain Corp., et al.*, Illinois Commerce Commission Docket No. 32267.

7. Plaintiffs are subject to the jurisdiction of the Illinois Commerce Commission and the comprehensive regulatory provisions of the Illinois Public Utility Act and the laws and statutes of the State of Illinois.

[fol. 93] 8. The equities involved herein are against the plaintiffs and in favor of the defendants, and the relief prayed by the plaintiffs herein should be denied.

It Is Therefore Ordered, Adjudged and Decreed that the injunction and the relief prayed for by plaintiffs herein be and the same are hereby denied.

It Is Further Ordered, Adjudged and Decreed that the motion of the defendants filed herein to strike plaintiffs'

complaint and dismiss the cause be and the same is hereby sustained.

It Is Further Ordered, Adjudged and Decreed that the above entitled cause be and the same is hereby dismissed at the cost of plaintiffs.

Enter: Igoe, Judge.

Dated: June 26, 1945.

(Memorandum Opinion attached but not copied.)

In the District Court of the United States

* * (Caption—44-C-1257) * *

Notice of Appeal—Filed July 9, 1945.

Notice is hereby given that Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Inc., plaintiffs in the above entitled case, jointly and severally hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from judgment entered in this cause June 26, 1945, denying the Writ of Injunction and other relief prayed by plaintiffs in their complaint, as amended, and sustaining [fol. 94] the motion of the defendants to strike the complaint and to dismiss the cause and dismissing the cause at the cost of plaintiffs.

Dated July 9, 1945.

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, by Ferre C. Watkins, Their Attorney; Continental Grain Company, by Floyd E. Thompson, One of Its Attorneys; Rosenbaum Bros., Cargill, Inc., by Leo F. Tierney, One of Their Attorneys.

Ferre C. Watkins, 135 South LaSalle St., Chicago; Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Poppenhusen, Johnston, Thompson & Raymond, 11 South LaSalle St., Chicago; Leo F. Tierney, Frank W. Sullivan, Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago.

(Attached hereto is the following certificate:)

[fol. 95] Certificate of Mailing

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 10th day of July, 1945, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

George F. Barrett, Attorney General, 208 South La Salle Street, Chicago, Illinois; Irvin Rooks and Lee A. Freeman, 135 South La Salle Street, Chicago, Illinois.

Roy H. Johnson, Clerk. (Seal.)

In the District Court of the United States

* * (Caption—44-C-1257) * *

Statement of Points on Which Plaintiffs Intend to Rely on Their Appeal—Filed July 9, 1945

Plaintiffs, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., intend to rely on their appeal on the following points:

1. The Court erred in granting the motion of defendants to strike the complaint and to dismiss the cause of action.

[fol. 96] 2. The Court erred in dismissing the cause of action.

3. The Court erred in denying the writ of injunction as prayed in the complaint.

4. The Court erred in holding that the United States Warehouse Act (7 U. S. C., Sec. 241, et seq.) and the regulations promulgated pursuant thereto do not regulate the business of public grain warehousemen licensed under said Act.

5. The Court erred in refusing to hold that the field of regulating the business of public grain warehousemen licensed under the United States Warehouse Act is not occupied by the Government of the United States and that the laws of the State of Illinois respecting the regulation of public grain warehousemen are not superseded by said Act.

6. The Court erred in holding that Illinois Commerce Commission has jurisdiction to regulate charges for public storage of grain by public grain warehousemen licensed under the United States Warehouse Act.

7. The Court erred in holding that Illinois Commerce Commission had jurisdiction to regulate the practices of public grain warehousemen licensed under the United States Warehouse Act.

8. The Court erred in holding that the United States Warehouse Act does not supersede the law of Illinois which makes it illegal for a public grain warehouseman to store his own grain in a public grain warehouse operated by him.

9. The Court erred in holding that Illinois Commerce Commission had jurisdiction to proceed under the complaint filed with it by defendants Daniel F. Rice and others July 28, 1944.

10. The Court erred in refusing to hold void the order of Illinois Commerce Commission entered October 10, 1944, denying the motion of plaintiffs herein to dismiss the complaint pending before the Commission and ordering the hearing on said complaint to proceed.

11. The Court erred in refusing to hold void the order of Illinois Commerce Commission entered October 10, 1944, denying the alternative motion of plaintiffs herein to strike the complaint pending before the Commission and each paragraph thereof, and more particularly paragraphs 3, 7, 8, 9, 9(a), 9(b), 9(c), 9(d), 9(e), 10, 11, 12, 13, 13(a), 13(b), 13(c), 13(d), 13(e), 13(f), 13(g), 13(h), 13(i), 14, 15 and [fol. 97] 16 of said complaint, for lack of jurisdiction in said Commission to entertain the complaint and the various specifications in the separate paragraphs thereof.

12. The Court erred in refusing to hold that the subject matter of the complaint filed with Illinois Commerce

Commission by Daniel F. Rice and others July 28, 1944, is beyond the jurisdiction of such Commission and is exclusively within the jurisdiction of the Government of the United States under the United States Warehouse Act by reason of paragraph 3, section 8, of Article I of the Constitution of the United States.

13. The Court erred in denying the relief prayed in the complaint herein.

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, by Ferre C. Watkins, Their Attorney. Continental Grain Company, by Floyd E. Thompson, One of its Attorneys. Rosenbaum Bros., Cargill, Inc., by Frank W. Sullivan, One of their Attorneys.

Ferre C. Watkins, 135 South LaSalle St., Chicago. Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Poppenhusen, Johnston, Thompson & Raymond, 11 South LaSalle St., Chicago. Leo F. Tierney, Frank W. Sullivan, Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago.

[fol. 98] Bond on appeal for $250.00 filed July 10, 1945, omitted in printing.

[fol. 99] In the District Court of the United States

* * (Caption—44-C-1257) * *

Stipulation as to the Record—Filed July 9, 1945

To Roy H. Johnson, Clerk of said Court:

The undersigned attorneys of record for the parties in the above entitled cause stipulate that the following items constitute a complete record of all of the proceedings had [fol. 100] and of all the evidence heard in the District Court in the above entitled matter, and request you to make a transcript of the items designated below to be filed as the record on appeal in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the notice of appeal this day filed with you by the plaintiffs:

1. Placita.

2. Complaint filed October 20, 1944, with affidavit and exhibits attached.

3. Notice and motion for preliminary injunction filed October 23, 1944.

4. Appearance of defendants, Illinois Commerce Commission and members thereof and Attorney General, filed November 1, 1944.

5. Appearance of defendants, Daniel F. Rice and others, filed November 8, 1944.

6. Answer of Illinois Commerce Commission and others to motion for preliminary injunction filed December 28, 1944.

7. Motion of Illinois Commerce Commission and others to strike the complaint and dismiss the case filed December 28, 1944.

8. Answer of Daniel F. Rice and others, filed December 30, 1944.

9. Motion of plaintiffs for leave to file amendment to complaint and that plaintiffs' motion for preliminary injunction be heard upon the complaint as amended, filed February 19, 1945.

10. Order granting said motion, entered February 19, 1945.

11. Amendment to complaint with affidavits attached, filed February 19, 1945.

12. Motion of plaintiffs for leave to file affidavits in support of motion for preliminary injunction, filed February 26, 1945.

13. Order granting said motion, entered February 26, 1945.

14. Affidavits in support of motion for preliminary injunction, filed by plaintiffs February 26, 1945.

15. Affidavit on behalf of Illinois Commerce Commission and others, filed March 2, 1945.

16. Affidavit of Carl A. Sorling, filed March 5, 1945.

17. Memorandum opinion of Judge Michael Igoe, filed June 15, 1945.

[fol. 101] 18. Judgment denying injunction, sustaining motion to strike and dismissing case, entered June 26, 1945.

19. Notice of appeal, filed July 9, 1945.

20. Points relied upon for reversal, filed July 9, 1945.

21. Stipulation as to record, filed July 9, 1945.

22. Bond on appeal, filed July 9, 1945.
23. Clerk's certificate.

Dated July 9, 1945.

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, By Ferre C. Watkins, *Their Attorney.*

Continental Grain Company, By Floyd E. Thompson, *One of its Attorneys.*

Rosenbaum Bros., Cargill, Inc., by Frank W. Sullivan, *One of its Attorneys.*

Illinois Commerce Commission, and John D. Biggs, William Farrillo, Frank Peska, Edwin A. Rosenstone, Val J. Washington, *Commissioners.* By George F. Barrett, *Attorney General of Illinois.* Albert J. Meserow, *Assistant Attorney General.*

Daniel F. Rice, Joseph J. Rice, Walter T. Rice, William F. Rowley, By Irvin Rooks, Lee A. Freeman, *Their Attorneys.*

George F. Barrett, *as Attorney General of Illinois,* George F. Barrett.

[fol. 102] Clerk's Certificate to foregoing transcript omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER—August 9, 1945

It is ordered that the stipulation of counsel relative to printing the transcript of record be, and the same is hereby, approved.

[fols. 103-104] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 105] Placita omitted.

In United States Circuit Court of Appeals, Seventh Circuit

Before: Hon. J. Earl Major, Circuit Judge. Hon. Otto Kerner, Circuit Judge. Hon. Charles G. Briggle, District Judge.

8898

Great Lakes Elevator Corporation, et al., Plaintiffs-Appellants,

vs.

Illinois Commerce Commission, et al., Defendants-Appellees

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Order—May 8, 1946

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Leo F. Tierney, Mr. Ferre C. Watkins and Mr. Floyd E. Thompson, counsel for appellant, and by Mr. Lee A. Freeman and Mr. William C. Wines, counsel for appellees, and the Court takes this matter under advisement.

[fol. 106] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OCTOBER TERM, 1945, APRIL SESSION, 1946

8897

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, Plaintiff-Appellant,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees

8898

GREAT LAKES ELEVATOR CORPORATION, et al., Plaintiffs-Appellants,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before MAJOR and KERNER, *Circuit Judges*, and BRIGGLE, *District Judge*.

OPINION—Filed June 7, 1946

MAJOR, *Circuit Judge*. These are separate appeals from an order of the District Court, entered June 26, 1945, denying plaintiffs an injunction and sustaining defendants' motion to strike plaintiffs' complaint, and dismissing their causes of action. The appellant in No. 8897 is the Board of Trade of the City of Chicago, and the appellants in No. [fol. 107] 8898 are operators of warehouses for the storage of grain located in Chicago, Illinois. The latter have been licensed by the Secretary of Agriculture of the United States (hereinafter referred to as the Secretary), pursuant to the United States Warehouse Act (7 U. S. C. A. § 241, *et seq.*) (hereinafter referred to as the Warehouse Act). The appellees in both appeals are the Illinois Commerce Commission, the members of such Commission, Daniel F. Rice & Company and the Attorney General of Illinois.

While separate briefs and arguments have been submitted to this court in behalf of the parties in each appeal, the questions for decision are of a kindred nature and we are of the view that both appeals may be appropriately considered and disposed of in the same opinion.

On July 28, 1944, Daniel F. Rice & Company (hereinafter referred to as Rice) caused to be filed before the Illinois Commerce Commission (hereinafter referred to as the Commission) their complaint against the appellants in Nos. 8897 and 8898, alleging violations of the Public Utility Act and the Illinois Grain Warehouse Act of the State of Illinois. Subsequently, there was filed before the Commission separate motions by the Board of Trade and by the warehousemen to dismiss such proceeding on the ground that the Commission was without jurisdiction. On October 10, 1944, the Commission, after consideration of briefs and oral argument, entered its order denying the motions to dismiss the Rice complaint and setting the cause for hearing on October 24, 1944.

Thereupon, the Board of Trade and the warehousemen filed in the District Court separate complaints for the purpose of enjoining the Rice defendants from the further prosecution of their proceeding before the Commission, of enjoining the Commission from entertaining further jurisdiction of said matter and the Attorney General of the State of Illinois from instituting any proceeding against the instant plaintiffs for the purpose of enforcing any order of the Commission in the case now pending before it. Motions to dismiss each of the complaints were interposed. The two causes were consolidated for hearing in the court below, and such motions to dismiss were allowed in a single order. As stated, there are two appeals from this order, one in No. 8897 and the other in No. 8898.

The contested issues in these appeals are predicated upon a similar pattern. While stated by the respective [fol. 108] parties in somewhat different phraseology, the essential question for decision on the merits is whether the federal government has by legislation so occupied and pre-empted the field of regulation of the Board of Trade in one appeal and the warehousemen in the other as to deprive the Commission of authority to grant the relief and therefore to regulate in the manner prayed for by Rice. In contending that the federal government has so occupied and pre-empted the field, the Board of Trade (appellant in No.

8897) relies upon the Commodity Exchange Act (7 U. S. C. A. §1 *et seq.*), and the warehousemen (appellants in No. 8898) rely upon the Warehouse Act (7 U. S. C. A. § 241, *et seq.*). While these legislative enactments are separate and distinct, they are as applied to the facts of this case somewhat dependent upon each other, as will be hereinafter disclosed. Another issue raised by the Attorney General of Illinois is that the court below was without jurisdiction to hear and decide the questions presented.

We shall first consider the appeal by the warehousemen (No. 8898). In so doing, it appears desirable to relate further the facts as alleged in the complaint. Jurisdiction was alleged because the controversy arose under the laws of the United States, more particularly under the Warehouse Act, together with the regulations promulgated thereunder, and also by reason of Article I, Section 8, Clause 3 of the United States Constitution. It was alleged that each of the plaintiffs was engaged in the public storage of grain for hire for interstate commerce under a license duly issued by the Secretary, pursuant to the Warehouse Act, and under a schedule of rates, charges and practices duly filed with the said Secretary, as required by law, and that each of said plaintiffs as a holder of such license was subject to said Warehouse Act and the rules and regulations duly promulgated thereunder. Each of the plaintiffs, except Great Lakes Elevator Corporation, dealt in grain, both on its own account and as agent for others.

The grain market at Chicago is the world's largest grain market. For the year ending December 31, 1943, approximately two billion bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trade in grain futures contracts in the United States was transacted at the said market on the said Board of Trade, a corporation which has been designated a contract market by the Secre- [fol. 109] tary under the Commodity Exchange Act. Under that Act futures contracts on the Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the Warehouse Act. The warehouse receipts issued to plaintiffs were issued under, and complied in all respects with the Warehouse

Act, and were in general use upon the said Board of Trade in satisfaction of futures contracts on the interstate market, and as such were instruments of interstate commerce.

Then follows a review of the proceedings initiated by Rice before the Commission, plaintiffs' motions to dismiss and the action of the Commission thereon, as heretofore related and which need not be further detailed at this point. It was alleged that each of the plaintiffs, except Great Lakes Elevator Corporation, did business as an owner and merchandiser of grain and regularly stored, for interstate commerce, grain owned by it as well as that of others, in its warehouse or warehouses; that this right was permitted by the Warehouse Act and regulations, but that under the Constitution of the State of Illinois as construed by the Illinois Supreme Court it was illegal for a public warehouseman to store his own grain in a public warehouse operated by him. It was alleged that plaintiffs issued to themselves negotiable warehouse receipts for grain, in form prescribed by the Warehouse Act, representing in the aggregate many millions of dollars annually, and that such receipts represent the grain belonging to the owners of such warehouses. Such receipts were used by plaintiffs for the purpose of transferring title to such grain in sales to others and also as collateral for commercial loans obtained from banks. Such receipts were also used by others for a similar purpose. Many of such warehouse receipts were alleged to be outstanding and pledged as collateral for such loans. It was alleged that an application of the Illinois law would make the storing of such grain illegal and would destroy and seriously impair the value of such warehouse receipts in commercial transactions.

It was alleged that a hearing by the Commission on the Rice complaint would have the immediate effect of creating a cloud upon such warehouse receipts outstanding or to be issued and that plaintiffs as well as the public would be [fol. 110] subjected as a result to irreparable damages. It was further alleged that plaintiffs were subject to fine and imprisonment for failure to take out a state license under the Illinois law, and that the Commission by its refusal to dismiss the Rice complaint has decided that plaintiffs are subject to the laws of the State of Illinois and the penalties provided for violations thereof.

Each of the plaintiffs filed an affidavit in support of the motion for preliminary injunction, disclosing in detail the

national scope of its business. These affidavits show the amount of grain in bushels and value shipped and received by such warehouses from states other than Illinois. (We see no occasion to detail such information inasmuch as no question is here raised but that plaintiffs were engaged in interstate commerce.) The affidavits recite the issuance by each of the plaintiffs of warehouse receipts on forms furnished by the Department of Agriculture, which state on their face that the grain received by each warehouseman was "for storage in the course of interstate or foreign commerce." For the purpose of showing the value of the federal licenses held by plaintiffs, the amount of grain for a designated period stored in each warehouse, including that owned by the warehouseman against which receipts were outstanding, was disclosed. The affidavits further show that each of the plaintiffs has filed with the Secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture. It was further disclosed by the affidavits the amount of grain stored by the United States government during a designated period in each of the warehouses operated by plaintiffs. We see no reason to state the amount disclosed as to each warehouse. It is sufficient to state the amount was large; for instance, that stored by the Santa Fe elevator for a twelve month period was 4,663,469 bushels.

The Attorney General, on behalf of himself and the Commission, raises the question that the lower court was without jurisdiction to entertain the complaint, contending that the suit was one requiring the convocation of a three-judge court, under § 266 of the Judicial Code (28 U. S. C. A. § 380), that the suit was inhibited by the Johnson Act (§ 24 (1) of the Judicial Code, 28 U. S. C. A. § 41 (1), as amended in 1934), and that interstate commerce was not involved. While Rice made the same contention before the District [fol. 111] Court, they have not raised the question here. The position of the Attorney General is predicated upon the erroneous premise, so we think, that plaintiffs by their bill sought to invalidate a state law as being in conflict with the federal Constitution or an enactment of Congress. The case was tried below and is presented here solely on the theory that the state law in question was superseded and rendered inoperative by federal enactment which has "pre-empted" the field in controversy. If the plaintiffs

had succeeded below or if they succeed in this court, it would not mean that any provision of the Illinois law or Constitution has been invalidated. It would only mean that such law or constitutional provision is inapplicable to a situation such as the instant one.

§ 266 of the Judicial Code must be complied with only where the injunction is sought "upon the ground of the unconstitutionality of such statute," and § 24 (1) of the Judicial Code inhibits a federal court from taking jurisdiction where it is sought to enjoin the action of an administrative board, etc., where jurisdiction is based "solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States." It appears evident that neither of these provisions is controlling. Moreover, in the recent case of *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, the complaint alleged, as in the instant case, that the federal statute preempted and occupied the field so as to deprive the state agency of jurisdiction. The case was heard by a single judge. The jurisdictional question was raised in the Court of Appeals, 116 F. 2d 227, 230, wherein the court stated: "The suit was not one for three judges. It did not attack the constitutionality of the Alabama statutes, it affirmed their constitutionality." The Supreme Court (315 U. S. 148) decided the case on its merits without reference to the jurisdictional question. See also *Ex Parte Bransford*, 310 U. S. 354, 358; *Ex Parte Buder*, 271 U. S. 461; and *Ex Parte Hobbs*, 280 U. S. 168. While other points argued by the Attorney General on the jurisdictional phase have been noted, we think they are without merit.

This brings us to a consideration of the case on the merits. No question is raised but that Congress had the authority to exercise all regulatory power over federally licensed warehouses to the exclusion of the state. In fact, such authority on the part of Congress is conceded. The [fol. 112] question is, did Congress by the Warehouse Act intend to occupy and pre-empt the field to the exclusion of state authority? That the question is a troublsome one is evidenced by the legion of cases in which it has been considered. A discussion of the numerous cases relied upon by the respective parties for the purpose of distinguishing or reconciling them would perhaps be futile and serve no useful purpose. Reference to a few of the latest Supreme Court opinions will suffice.

In *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766, the court stated:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, (citing cases), or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. (Citing cases)."

In *Hines* v. *Davidowitz*, 312 U. S. 52, 67, the court stated:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The case on its facts and questions decided most similar to the instant one is that of *Cloverleaf Butter Co.* v. *Patterson, supra.* The court (page 155) enumerates many cases in support of two propositions: (1) "Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation," and (2) "But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application."

We think it is fair to conclude that plaintiff's contention in the instant matter is that this case falls within the second category, while defendants contend that it falls within the first. In other words, defendants appear to concede that [fol. 113] there has been a partial invasion of the field by the federal government but that a portion has been left open to the state, and included therein are those matters of which the Commission has assumed jurisdiction as a result of the Rice complaint.

Plaintiffs argue that Congress has specifically taken over all regulatory power concerning federally operated ware-

houses, or in the alternative, that it has done so by implication, and that exercise by the Commission of the matters before it "plainly and palpably infringes," the policy of Congress or presents an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The United States Warehouse Act was originally enacted in 1916. As thus enacted, Sec. 29 (7 U. S. C. A. Par. 269) provided:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *."

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 40 F. 2d 1, the Court of Appeals for the Fifth Circuit, relying upon the provision just quoted, affirmed a decree of the District Court which had refused to enjoin the state officials of Alabama from enforcing certain state regulations applicable to warehouses. Shortly thereafter (in 1931), Congress amended § 29 to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

A literal reading of this amended section furnishes strong support for plaintiffs' contention. Both the House Com- [fol. 114] mittee Report (H. Rept. 4, 71st Cong., 1st Sess., p. 4) and the Senate Committee Report (S. Rept. 1775, 71st Cong., 3rd Sess., p. 2) furnish further support to the theory that Congress by this amendment intended to eliminate the dual jurisdiction which had theretofore existed between the

federal and state governments as to federally operated warehouses. In a footnote we quote some of the more important statements contained in these reports.[1]

The only case of which we are aware wherein a court has considered the precise issue presented here is *In Re Farmers Cooperative Ass'n.*, 8 N. W. 2d 557, decided by the Supreme Court of South Dakota in 1943. The opinion discloses that the licensing feature, in fact the general provisions of the South Dakota law concerning warehouses, are quite similar to those in Illinois. Two questions were before the court: (1) did the warehousemen fall within the reach of the power granted to Congress by the commerce

---

[1] In the House Report it was stated: "Under Section 29 * * * of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. * * * To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject."

In the Senate Report it was stated: "Section 29 of the act now provides (quoting from Sec. 29). The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom."

The Report referred to the permissive feature of the federal Act and stated: "* * * if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. * * * In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency."

clause of the Constitution? and (2) if so, did Congress intend to exert that power when it enacted the United States Warehouse Act? The first question, not involved in the instant case, was answered in the affirmative, notwithstanding the warehouse in question was local in character and not a part of interstate commerce. This conclusion was reached on the theory that the business of the warehouse affected interstate commerce. In an affirmative answer to [Fol. 115] the second proposition, the court, in denying the contention that the state and federal Acts were not in conflict, stated: "The collision between these acts is head on. It is but a question of which master the Cooperative must serve." The court then refers to § 29 as amended in 1931, and states:

> "We interpret this as a clear grant of discretionary power to the Secretary of Agriculture, to achieve the congressional aim either through cooperation with state officials in promoting state regulation, or by direct federal control. When the latter course is followed both by reason of the terms of the act, and the paramount nature of federal power, the federal control displaces state control."

In connection with this South Dakota decision, see *Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 253.

At the same time that Congress amended § 29 it also amended § 6 (7 U. S. C. A. Par. 247), which makes provision for the execution of a bond by warehousemen applying for a federal license. Prior to the amendment the section required a bond "to secure the faithful performance of his obligations as a warehouseman under the laws of the State, district or territory in which he is conducting such warehouse, as well as under the terms of this Act * * *." By the 1931 amendment the requirement that the bond be conditioned upon compliance with the laws of the state, district or territory in which the warehouse was conducting business was eliminated and it was only required that the bond be conditioned upon compliance with the federal act and federal regulations thereunder. Referring to this amendment, the Senate Committee Report (heretofore noted) stated: "* * * again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

Another legislative expression of some significance is found in the Commodity Exchange Act (§ 5 (a), 7 U. S. C. A. Par. 7a (7)). This section makes it mandatory that receipts issued under the Warehouse Act be accepted in satisfaction of any futures contract without discrimination and "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law."

In this connection it is pertinent and of some importance to note that in *Cloverleaf Butter Co.* v. *Patterson, supra,* [fol. 116] the court (page 155), cites in footnote 5 *Merchants Exchange* v. *Missouri,* 248 U. S. 365, 368, as one of the cases holding that the state was free to legislate upon matters left unregulated by the nation. True, the court in the *Merchants* case referred to § 29 of the Warehouse Act as manifesting the purpose of Congress not to supersede state laws. This reference, however, was made prior to the time § 29 was amended in 1931. More significant is that the court in the *Cloverleaf* case in footnote 6 (page 156) cites § 29 as an instance where Congress had specifically exercised its power of legislation so as to conflict with the regulation of the state, and that the federal legislation became exclusive in its application. The footnote reference was to § 29 as amended in 1931. Thus we have the court in the same opinion treating § 29 before it was amended as an illustration of dual authority and § 29 after it was amended as providing for sole authority in the federal government.

Defendants profess to discern from the language employed by Congress a purpose and intent to permit the states to share the control over federally licensed warehousemen. It is suggested that the language in § 29 as amended in 1931, by which the Secretary "is authorized to cooperate with state officials relating to warehousemen" recognizes such purpose. We think it more likely that Congress by this language recognized the existence of state laws over all warehouses even though they were instrumentalities of interstate commerce unless and until they had made application and obtained a license under the federal Act. If Congress intended to share with the states the control of the latter class of warehouses, it would seem that there was no real purpose for the amendments of 1931.

Defendants also made the point that the exclusive authority of the Secretary provided in § 29 is confined to that conferred "under this chapter," meaning the federal Warehouse Act. In connection with this point, much stress is placed upon a statement in *United States* v. *Hastings*, 296 U. S. 188, 199, wherein the court said with respect to amended § 29:

> "The amendment of 1931, with respect to conflict with the operation of state laws, does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act * * *."

[fol. 117] The court there had before it the question of the sufficiency of an indictment which charged a theft from a federally licensed warehouse. The indictment was held bad for the reason that there was a failure to allege that the product stolen from the warehouse had been stored for interstate commerce, which the court held was essential to make the Federal act applicable. It was in this connection that the court made the statement just quoted. How this has any bearing upon the instant situation we are unable to discern. Evidently the Act in its relation to warehouses is limited to interstate commerce, and the Secretary's jurisdiction necessarily is confined to that field.

Defendants also stress the point that the obtaining of a license under the Act is permissive. We are unable to see how that affects the situation. It only means that the warehouseman may exercise an option as to whether he will operate under the state or federal law. When he exercises such option in favor of the latter, complies with its terms and has been issued a license, he is under the Act as definitely and certainly as though it was a mandatory requirement on his part. No vacuum is created, as defendants argue. Before he is issued a federal license he is under the control of the state, but after the federal license has been issued he is under the jurisdiction of the Secretary.

Defendants argue that the federal Act "in nature, form and intent is essentially a warehouse receipt Act" and that the purpose of its enactment was to establish "a warehouse receipt of respected value so that it would be accepted as collateral on loans." Whether the Act should be thus

narrowly construed is open to argument, although a study of its provisions together with the legislative history lends support to the contention. Assuming, however, that this theory is correct, we are of the view that it is of little if any benefit to defendants' position. The importance which Congress attached to warehouse receipts is illustrated by the numerous conditions required as a prerequisite to their issuance. (See 7 U. S. C. A. § 260.) From their very nature it is reasonable to conclude that Congress intended that the federal government take over all authority necessary to preserve their legality, negotiability, safety and value. This in itself required a broad field of control. It must be remembered that these receipts were issued against the grain stored in the warehouse and were conclusive evidence of ownership thereof. Exclusive jurisdiction over the receipts [fol. 118] having been conferred upon the Secretary, it seems unreasonable to conclude that he should be required to share with the state jurisdiction over the grain against which the receipts were issued and over the warehouses in which such grain was stored. The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts.

Assuming arguendo that the Secretary was not given express authority over the matters now before the Commission (charged in the Rice complaint), it seems that such authority was clearly implied. This view is strongly supported by the decision in *Cloverleaf Butter Co.* v. *Patterson, supra*, where the court sustained the authority of a federal agency to the exclusion of state authority. The product involved was butter. The federal agency was given express authority over the finished product known as renovated butter but not over packing house butter. It was held that express authority over the former carried with it implied authority over the latter. The court on page 169 stated, "Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture," and that to so construe the federal Act "would not only hamper the administration of the federal act but would be inconsistent with its requirements."

A detailed discussion of the numerous violations charged in the Rice complaint would unduly prolong this opinion. We shall merely attempt to state the various matters complained of and show that the Secretary in the main has explicit authority with reference thereto. In this connection it is pertinent to observe that the Secretary (7 U. S. C. A. § 268) is authorized to promulgate all rules and regulations regarded by him as necessary for the efficient execution of the Act. In conformity with this provision, the Secretary has promulgated voluminous regulations designed no doubt to cover every feature of the management, control and operation of federally licensed warehouses, the storage of grain therein and the issuance of warehouse receipts. No point is made by defendants but that these regulations are within the authority conferred by Congress upon the Secretary.

[fol. 119] Perhaps the most important, at least the most controverted, charge is that the plaintiffs' warehousemen "have unlawfully maintained and do now maintain unjust, unreasonable and excessive rates and charges for services rendered, contrary to Sec. 32 of the Public Utility Act of Illinois." § 25 of the Warehouse Act provides that the Secretary may, after hearing, revoke a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered." § 23 requires that reports be made to the Secretary concerning the "conditions, contents, operation and business" of the warehouse in such form and at such times as the Secretary may require. The rules and regulations promulgated by the Secretary under the Act require not only the filing of a schedule of charges but also the filing of a statement of any proposed change, together with the reason therefor, and it is required that such charges be conspicuously posted in the principal office of the warehousemen.

Defendants contend that there is no conflict between the two authorities because the authority to initiate or fix rates is solely a matter for the state and the Secretary has only the power to determine when rates are unreasonable or exorbitant, in other words, what might be termed a veto power. We think the contention is not tenable. It must be remembered that one of the conditions upon which the Secretary is authorized to issue a license is the showing by the applicant therefor that the charge which the latter proposes to make is not unreasonable or exorbitant. This is a

matter solely for the determination of the Secretary. Assuming that the state authority has the right to fix such rate, it would of course have the right to determine a rate higher than that determined by the Secretary to be not unreasonable or exorbitant. In such a situation the warehouseman would be subjected to the penalty provided for a failure to comply with the state rate, and at the same time in order to procure or retain a federal license he would be compelled to violate such rate. Certainly a warehouseman could neither fix nor raise his charge without the approval of two separate and distinct authorities. We suppose that the essential function of a rate making body is to determine rates which will be fair both to the utility and to the public, and it appears plain that the Secretary is vested with the authority to accomplish such purpose.

It was charged in the Rice complaint that plaintiffs or [fol. 120] some of them violated Article XIII of the Illinois Constitution by dealing in grain owned and stored by them in their own warehouses. This provision of the Illinois Constitution was sustained in *Hannah* v. *People*, 198 Ill. 77. Affidavits filed in support of plaintiffs' bill disclose that several million bushels of grain were stored in plaintiffs' warehouses which were owned by them and for which receipts had been issued under federal authority. § 18 of the Act (Par. 260 U. S. C. A.) provides for the contents of receipts, and Par. (i) states, "If the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership" shall be shown. It is argued that this provision does not authorize a federally licensed warehouseman to store his own grain. We think it does. The fact that the Secretary has permitted such storage indicates that he has so construed the Act. To sustain defendants' contention on this point would immediately invalidate receipts of the value of millions of dollars. It would seriously impair one of the main purposes of the Act, that is, the integrity of warehouse receipts.

Plaintiffs were charged with discrimination against Rice, public grain producers, owners, shippers, dealers, etc., and with granting preferences and advantages to the federal government and agencies thereof, contrary to a provision of the Utility Act of Illinois. The manner of the alleged discrimination is not stated except it is asserted that the

federal government and its agencies are charged a lower rate than that charged Rice.

§ 13 of the Act (Par. 254 U. S. C. A.) prohibits the discrimination by warehousemen and provides for storage "without making any discrimination between persons desiring to avail themselves of warehouse facilities." It would appear that this provision gives the Secretary authority to prevent discriminations either in favor of or against any person employing warehouse facilities. Although it appears that plaintiffs have favored the federal government and its agencies in the storage of grain, it is shown that the Secretary had knowledge thereof and acquiesced therein.

It was charged that some of plaintiffs received undue preferences and discriminated by mixing high quality grain with their own inferior grain, sacrificing part of storage charges to effect purchases and sale of grain, and rebating [fol. 121] storage charges, retaining desirable transit tonnage for their own use, storing their own grain in warehouses with more reasonable insurance rates and unduly delaying loading of grain, all in violation of provisions of the Utility and Grain Warehouse Acts of Illinois. These are all matters, in our judgment, completely within the sphere of the federal regulatory power. As already noted, the federal Act permits a warehouseman to store his own grain, and the Secretary is authorized to prevent discrimination. In addition, § 15 requires inspection and grading of fungible agricultural products stored in the federally licensed warehouses; § 16 prohibits the mixing of fungible agricultural products of different grades; § 30 provides for fine and imprisonment for the fraudulent grading of agricultural products stored under the Act, and § 21 requires that stored products be delivered upon proper demand without unnecessary delay.

Plaintiffs or some of them were charged with maintaining unsafe, inadequate and inefficient warehouses, resulting in exorbitant and prohibitive insurance rates and in rendering inefficient service resulting in a deterioration of the grain stored in such warehouses. § 3 of the Act authorizes the Secretary of Agriculture: (1) "* * * to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products," and (2) "* * * to prescribe * * * the duties of the warehouse-

men conducting warehouses licensed under this Act with respect to their care and responsibility for agricultural products stored therein." § 23 requires a warehouseman to make reports to the Secretary concerning the condition, contents, operation and business of a warehouse in such form and at such times as the Secretary may require. § 24 authorizes the Secretary to examine agricultural products stored in licensed warehouses and publish his findings. It appears that the affirmative authority thus conferred upon the Secretary by §§ 3, 23 and 24 is such as to give him control over the warehouses and the grain stored therein in the manners complained of in this paragraph.

Plaintiffs were charged with rendering services without filing and publishing rates, rules and regulations as required by the state. Under regulation 5, § 3 of the Regulations, a federal licensee is required to file with the Secretary a schedule of charges to be made as well as a copy of the [fol. 122] rules under which he operates. The regulation further provides that a copy of such rules and schedule of charges must be posted in the principal office of a warehouseman.

Another charge against plaintiffs was that they or some of them abandoned and discontinued service without the approval of the Commission. § 5 of the Act provides for the termination of a federal license for failure to comply with the terms of the Act. As already shown, § 3 authorizes the Secretary to determine the suitability of a federal warehouse for the storage of agricultural products. It thus appears that the Secretary is authorized to determine when a warehouse should be abandoned, and that such determination is enforceable by revocation of the license. The mere issuance of a federal license carries with it the representation of a determination by the Secretary that the warehouse is suitable for the storage of grain. Suppose the Commission should find that the same warehouse should be abandoned. We think this would present a direct conflict between the Secretary and the Commission. Suppose on the other hand that the warehouseman holding a federal license desires to abandon the service. Being under bond exclusively to the federal agent, he could only do so by satisfying the bond and surrendering his license. When that was accomplished, control would revert to the state and the Commission.

The complaint further charged the plaintiffs with charging unjust, unreasonable and discriminatory rates, operating without a state license and mixing public grain with grain of different grades. We have already referred to the authority of the Secretary concerning these matters and we need not discuss them further. It is sufficient to state that we are of the view that the Secretary has express authority over such matters and that any authority exercised by the state would be directly in conflict therewith.

Finally, plaintiffs were charged with having violated the Illinois Statute by failing to secure approval of the Commission of contracts with affiliates, with other public utilities and by failing to obtain authority to issue securities. While we find nothing in the Act which expressly relates to such matters, we think, for the reasons already stated, that the Secretary has implied authority to deal therewith.

In our view, all of the matters charged in the Rice complaint, on which the Commission has assumed jurisdiction and is about to act, concern directly or indirectly the opera- [fol. 123] tion of federally licensed warehouses and the storage of grain therein for which receipts are issued. The allowance of such relief by the Commission on the charges thus made would conflict with the Warehouse Act or "plainly and palpably infringes its policy." The exercise of such authority by the Commission would thwart the primary purpose which Congress sought to accomplish. Thus viewing the situation it follows that the order appealed from must be, and is hereby, reversed, with directions to overrule the defendants' motion to strike the complaint and to proceed in accordance with the views herein expressed.

This brings us to a consideration of the appeal in No. 8897, which we think may be disposed of in rather short order. This is so, as we view the situation, because our conclusion in No. 8898 is largely and perhaps completely determinative of that which must be reached on this appeal.

The Board of Trade relies upon the Commodity Exchange Act (§§ 1-17 (a), Title 7 U. S. C. A.) as conferring upon the Secretary of Agriculture exclusive jurisdiction of all regulatory authority over it and similar instrumentalities. The provisions of the Act as well as the rules and regulations promulgated under the authority contained therein are lengthy and we think it is not necessary to set them forth or discuss them in detail. It is sufficient to state that we

have given them careful consideration and think that Congress intended and expressly provided for, exclusive federal control and authority over the agencies to which the Act is applicable, including the Board of Trade.

As shown in our discussion of appeal No. 8898, the Commodity Exchange Act is closely related to the United States Warehouse Act; in fact, in some instances the provisions of the two Act are overlapping. The gist of the Rice charge of which the Commission has assumed jurisdiction is:

> "The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act."

[fol. 124] The relief prayed for before the Commission was:

> "Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific."

Not only was the charge predicated upon § 194 (b) of the Illinois Grain Warehouse Act (Ill. Rev. Stats., 1941, Chap. 114, § 194 (b)), but it is conceded that this is the sole provision which confers or purports to confer any authority in the Commission over the Board of Trade.

§ 194 (b) provides:

> "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or to the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Com-

mission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective."

As we read this provision, the authority of the Commission is limited to (1) warehousing of grain in any public warehouse, (2) the custody of grain in any private warehouse, and (3) the use or negotiation of custodian's receipts for such grain. In short, it has to do only with the warehousing of grain and the use of warehouse receipts.

As we have shown in appeal No. 8898, the Secretary of Agriculture has exclusive authority over warehouse receipts, including the terms or contents thereof, as well as the storage of grain against which such receipts are issued and the warehouse in which such grain is stored. Again we call attention to § 5 (a) (7 U. S. C. A. Par. 7 (a) (7)) of the Commodity Exchange Act which provides that receipts issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman [fol. 125] under the laws of any state or enjoys other or different privileges than under state law." This provision, as we understand, makes it mandatory that the Board of Trade accept receipts issued under the authority of the United States Warehouse Act, even though the warehouseman is not licensed by the state.

It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid, and this would be so whether or not it was approved by the Illinois Commission. It is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded the precise field occupied by the Illinois Commission by reason of § 194 (b) the Illinois Grain Warehouse Act and has rendered its authority inoperative.

It follows that the order appealed from must also be reversed as to the Board of Trade. It is so ordered, with directions to overrule the defendants' motion to strike the complaint and to proceed in accordance with the views herein expressed.

[File endorsement omitted.]

[fol. 126] IN UNITED STATES CIRCUIT COURT OF APPEALS—SEVENTH CIRCUIT

8898

Before Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge; Hon. Charles G. Briggle, District Judge

GREAT LAKES ELEVATOR CORPORATION, et al., Plaintiffs-Appellants,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

JUDGMENT—June 7, 1946.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said District Court with directions to overrule the defendant's motion to strike the complaint and to proceed in accordance with the views expressed in the opinion of this Court filed this day.

[fol. 127] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

DESIGNATION OF RECORD—Filed June 14, 1946

To: Honorable Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

The following items constitute a complete record of all of the proceedings had and all of the evidence in the above entitled cause in the United States Circuit Court of Appeals for the Seventh Circuit and the undersigned requests you to make a transcript of the items designated to be filed as the record on appeal in the United States Supreme Court pursuant to the rules in such cases made and provided:

1. The entire printed record in the United States Circuit Court of Appeals for the Seventh Circuit.
2. Hearing May 8, 1946.
3. Opinion June 7, 1946.

[fol. 128] 4. Judgment June 7, 1946.

4a. Order staying mandate.

5. Designation.

Dated June 14, 1946.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Illinois Commerce Commission and its Chairman, John B. Biggs, and William Parillo, Frank Peska, Edwin A. Rosenstone, Val J. Washington, Members of said Commission, Defendants-Appellees.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
County of Cook, ss:

William C. Wines, being first duly sworn upon his oath, deposes and says that he is an Assistant Attorney General in the office of George F. Barrett, Attorney General of the State of Illinois; that he has served a copy of the aforesaid

designation upon all of the attorneys of record in the above entitled cause on June 14, 1946.

William C. Wines.

Subscribed and sworn to before me this 14th day of June, A. D. 1946. Elizabeth P. Henderson, Notary Public. (Seal)

PROOF OF SERVICE

Received a copy of Designation of Record in the above entitled cause this 14th day of June, A. D. 1946.

Mayer, Meyer, Austrian & Platt, Ferre C. Watkins, Rooks & Freeman, Floyd E. Thompson, Frederick Mayer.

[File endorsement omitted.]

[fol. 129] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

DESIGNATION OF RECORD—Filed June 17, 1946

To: Honorable Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

On June 14, 1946, the Attorney General of the State of Illinois, on behalf of the Illinois Commerce Commission and its respective members, and George F. Barrett, Attorney General of the State of Illinois, defendants-appellees, filed with this court a designation of record.

Defendants-appellees Daniel F. Rice & Company, a partnership, and its individual partners, hereby respectfully join in, and adopt as to content, said designation of record of the Attorney General.

Daniel F. Rice & Company, a Partnership, and Its Individual Partners By Irvin Rooks, Lee A. Freeman, *Their Attorneys.*

[fol. 130] UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
County of Cook, ss:

Lee A. Freeman, being first duly sworn, on oath deposes and says that he is one of the attorneys for defendants-appellees Daniel F. Rice & Company, a partnership, and its individual partners; that he has served a copy of the aforesaid designation upon all of the attorneys of record in this cause on June 17, 1946.

Lee A. Freeman.

Subscribed and sworn to before me this 17th day of June, 1946. M. E. Lalod, *Notary Public.*

[File endorsement omitted.]

[fols. 131-132] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATES—June 18, 1946

On motions of counsel for defendants-Appellees, Illinois Commerce Commission, *et al.*, and Daniel F. Rice &. Company, it is ordered that the issuance of the mandates of this Court in these causes be, and the same are hereby, stayed for a period of sixty (60) days.

[fol. 133] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 134] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 470

ORDER ALLOWING CERTIORARI—Filed October 21, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 135] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 472

ORDER ALLOWING CERTIORARI—Filed October 21, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 440

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership.

C. AMPLIN-BREALY COMPANY, CHICAGO 288

INDEX.

	PAGE
Petition for a Writ of Certiorari	1
Statement	1
Jurisdiction	5
Questions Presented	5
Reasons for Granting the Writ	6
Brief in Support of Petition	9
I. Federal nullification of state authority results only where a precise coincidence of regulation or an irreconcilable conflict is clearly demonstrated	9
II. The federal act is limited and circumscribed in its provisions, scope and purpose	11
III. The major state regulatory issues involved	15
A. Enforce state provisions requiring prior commission approval of: (1) Contracts and arrangements with affiliates and other utilities; (2) sales, leases and encumbrances of utility properties or assets; (3) security issues	15
B. Fix and determine just and reasonable rates	16
C. Enforce the state constitutional provision against occupying the dual and conflicting positions of public grain warehouseman and at the same time grain dealer	17
D. Eliminate discriminatory rates and practices	18
E. Establish safe, adequate and efficient public grain warehousing service and facilities	19
F. Precent unwarranted abandonment of public grain warehouse service and capacity	20
Conclusion	21
Appendix A	23
United States Warehouse Act	23
Commodity Exchange Act	32
Appendix B	33
List of States Which Provide Warehouse Regulation	33

List of Authorities.

Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U.S. 380 (1931) 20
Cleveland v. Hope Natural Gas Co., 44 P.U.R. (ns) 1, 33 (F.P.C. 1942) 16
Davies Whse. Co. v. Bowles, 321 U.S. 144 (1944) 9
Dickson v. Uhlmann Grain Co., 288 U.S. 188 (1933) .. 18
Federal Compress & Whse. Co. v. McLean, 291 U.S. 17 (1934) 12
Illinois Cent. R. R. Co. v. Pub. Utilities Com. of Illinois, 245 U.S. 493 (1918) 10
Interstate Commerce Com. v. Cincinnati, etc. R. Co., 167 U.S. 479 (1897) 16
Kelly v. Washington, 302 U.S. 1 (1937) 10
Minnesota ex rel. Whipple v. Martinson, 256 U.S. 41 (1921) 18
Munn v. Illinois, 94 U.S. 113 (1876) 7, 9
Railway Mail Association v. Corsi, 326 U.S. 88 (1945) 10
Reid v. Colorado, 187 U.S. 137 (1902) 10
Savage v. Jones, 225 U.S. 601 (1912) 10
Sinnot v. Davenport, 22 How. (U.S.) 227 (1859) 10
Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) .. 10
Townsend v. Yeomans, 301 U.S. 441 (1937) 9, 10, 12
Union Brokerage Co. v. Jensen, 322 U.S. 202 (1944) .. 12
U. S. v. Hastings, 296 U.S. 188 (1935) 13

Miscellaneous.

Commodity Exchange Act (7 U.S.C. 7a(7)) 4, 5, 7, 32
Illinois Constitution of 1870 17
Illinois Public Utilities Act 2, 5
S. Rept. 1775 to 71st Cong., 3rd Sess., February 17, 1931 14
United States Warehouse Act (Tit. 7 U.S.C., Secs. 241-73 .....3-5, 7, 11-20, 23-31
Vol. 72 Cong. Rec. Pt., 8 p. 8530, H.R. 7 14
Vol. 72 Cong. Rec. Pt. 8, p. 8529 14
Vol. 74 Cong. Rec. Pt. 6, p. 6138 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No.

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

STATEMENT.

This petition is filed on behalf of Daniel F. Rice & Company, a partnership (hereinafter referred to as "Rice"), for the issuance of a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, reversing orders of the District Court of the United States for the Northern District of Illinois, Eastern Division, which granted motions to strike and dismiss a bill of injunction seeking to restrain members of the Illinois Commerce Commission, the Attorney General of Illinois and the Rice defendants from proceeding to hearings in a certain cause instituted by Rice before the Illinois Commerce Commission.

On July 28, 1944, Rice, a grain commission merchant, on behalf of its customers as grain producers, dealers and

processors, filed a complaint with the Illinois Commerce Commission[1] against public grain warehousemen in the Chicago terminal area. These public warehouses are defined as, and are, public utilities under the state statute.

The Rice complaint charged these warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions and of a constitutional requirement. The relief prayed was an investigation, hearings and the entry of orders and directives which would:

1. Fix and establish just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain.
2. Prohibit and eliminate discriminatory practices effected by warehousemen to their own advantage, and in discrimination against the public, such as:
   a) Mixing grain in storage so as to retain for the warehouseman's own use the highest quality grain, while delivering to public storers the very bottom of the contract grade.
   b) Trafficking in transit billing or arbitrarily withholding desirable billing from public storage customers.
   c) Manipulating and rebating storage charges to effect grain sales and preferences.
   d) Manipulating the use of preferred storage space so that public storers of grain are obliged to pay the highest insurance rates.
   e) Delaying the loading out of grain to further the warehouseman's own sales—or prevent the removal from storage of public grain paying excessive storage charges.
3. Enforce the state constitutional prohibition against public warehousemen occupying the dual and conflict-

[1] An administrative board established under the Illinois Public Utility Act—*Ill. Rev. Stats.* (1945) Ch. 111-⅔, Secs. 1-84—with comprehensive regulatory powers over public utilities in the state.

ing positions of public grain warehousemen and at the same time grain dealers and merchandisers in direct competition with their storage customers.

4. Prescribe and establish reasonable, safe and adequate public grain warehouse service and facilities.
5. Prevent the unwarranted abandonment of public grain warehouse service and facilities without commission approval.
6. Enforce the state statutory provisions requiring the prior approval of the commission before:
   a) Securities are issued.
   b) Financial, operating and other similar contracts are entered into between the public warehouse and its affiliates.
   c) Contracts are entered into with other utilities or agreements made for the sale, lease or transfer of warehousing properties, or diversion of funds.
7. Enforce the state provision requiring a state license for public grain warehouses operating within the state. (Rec. 16-24)

The Rice complaint to the Illinois Commission joined the Board of Trade of the City of Chicago as a defendant, to the end that the improvements sought in warehousing practices could be in part achieved through Board of Trade rules.[2]

A motion to dismiss the proceedings was filed with and denied by the commission, and the cause set for hearings commencing October 24, 1944. (Rec. 25-8) Thereupon, several of the warehousemen who possess licenses issued under the United States Warehouse Act filed a bill in the District Court of the United States, to enjoin: a) the members of the commission from conducting hearings or entering orders in the cause, b) the Attorney General of Illinois

[2] The Board of Trade sought an injunction in a separate proceeding. We are also seeking review of the Court of Appeals' judgment in that companion case by separate petition simultaneously filed in *Board of Trade of the City of Chicago* v. *Illinois Commerce Commission, et al.*

from instituting any proceedings against the warehousemen for alleged violation of state statutes, and c) Rice from further prosecuting its complaint. The injunction was sought on the ground that the federal government, by the United States Warehouse Act (Tit. 7 U.S.C., Sec. 241 *et seq.*) and the Commodity Exchange Act (Tit. 7 U.S.C., Sec. 1 *et seq.*) has "preempted and occupied the field of regulation" over federally licensed public warehouses, to the "exclusion of any similar regulation" by Illinois. The validity of state authority was attacked on the ground that federal licensed warehouses were subject "solely to regulation" by the federal government. (Rec. 7, 8)

Motions to strike the complaint and dismiss the proceedings were filed by the Attorney General of Illinois and by Rice. (Rec. 36-48) Such motions were allowed and an order entered on June 26, 1945, dismissing the complaint. The District Court found that:

1. The United States Warehouse Act is not a utility regulatory act, but a limited and circumscribed exercise of federal control over warehousemen who voluntarily seek and obtain a federal license.
2. The federal act does not authorize the exercise of affirmative regulatory authority over the specific issues raised by the Rice complaint, nor does it permit the grant of relief sought before the state commission.
3. State regulation over federal licensed warehouses has not been preempted, excluded or superseded. (Rec. 88-93)

Appeals were taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 7, 1946, that court reversed the District Court, with directions to overrule the motions to strike the complaint.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on June 7, 1946. (Rec. 106) The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States, as amended. (Tit. 28 U.S.C., Sec. 347) The validity of provisions of the Illinois Public Utility Act are attacked on the ground of alleged repugnance to federal statutes.

The federal statutes involved are the United States Warehouse Act and Section 5a(7) of the Commodity Exchange Act, both set forth in Appendix A (*infra* 23-32). The state act involved is the Illinois Public Utility Act (Ill. Rev. Stats. (1945) Ch. 111⅔). The state act concededly provides expressly and in detail for comprehensive utility regulation of warehousing rates, practices, services and financial transactions.

Questions Presented.

1. Is the comprehensive state utility regulation of public grain warehousemen with respect to rates, practices, services and affiliate, securities and financial transactions in irreconcilable conflict with the provisions and limited control of the United States Warehouse Act, as enacted in 1916 and finally amended in 1931, or with the Commodity Exchange Act?

2. Are public grain warehousemen performing public utility services in Illinois completely exempt and immune from state regulation, and subject exclusively and solely to federal control because they have applied for and received a permissive or voluntary federal license?

3. Did the Circuit Court of Appeals for the Seventh Circuit err in holding:

a) That state authority and control may be invalidated and superseded by reason of federal regulatory authority implied and not expressly delegated.

b) That the state's comprehensive rate making power over public grain warehousemen has been superseded and that the federal agency has authority to determine rates.

c) That the state's comprehensive authority to order and direct the elimination of discriminatory practices by public grain warehousemen has been superseded.

d) That the state constitutional prohibition against a warehouseman occupying the position of public trust as a public warehouseman, and at the same time the conflicting position of a merchandiser and dealer in grain is invalid.

e) That the affirmative state regulatory authority which provides for safe and adequate warehousing service and facilities and prevents the unwarranted abandonment of such service, has been superseded as in direct conflict with any authority over such grain warehouses delegated by Congress to a federal agency.

f) That the state requirements with respect to commission approval of contracts with affiliates, with other public utilities, and approval before securities may be issued cannot be exercised over public grain warehousemen, on the ground that the Secretary of Agriculture "has implied authority" to deal with such matters.

4. Did the Circuit Court of Appeals for the Seventh Circuit err in reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Reasons for Granting the Writ.

The questions of law here presented are of great public importance. Federal questions of substance are presented which have not heretofore been determined by this court.

This court in the historic case of *Munn* v. *Illinois*, 94 U.S. 113 (1876), sustained the power of the Illinois legislature to fix public warehouse charges and regulate the business of public warehouses. That decision enabled the establishment of comprehensive state utility regulation of public warehousemen, as well as electric, gas, transportation and other forms of utilities. At present there are forty-one states that regulate warehouses storing agricultural products, thirty of which provide rate regulation (Appendix B). The judgment of the Circuit Court of Appeals for the Seventh Circuit, if allowed to stand, would invalidate or render impotent these many state systems of regulation. The validity of state statutes on the ground of alleged repugnance to the laws of the United States is here presented.

This is a case of first impression. No court has previously passed upon the validity of state regulation of public grain warehousemen in the form of affirmative control of rates, services, practices and financial transactions, in the face of claimed repugnance to the United States Warehouse Act or the Commodity Exchange Act.

The business of public grain warehousemen in the Chicago area has been described as "virtual monopolies". They channel grain to market from the great western producing areas. The services they perform, the rates charged and practices followed are an essential adjunct of the agricultural marketing process. If the judgment of the Circuit Court of Appeals for the Seventh Circuit is allowed to stand, there will be no affirmative regulation of any warehouseman who chooses to acquire a federal license. The court will have invalidated effective and comprehensive state regulation in Illinois and many other states, without being able to transfer the powers of regulation to the Secretary of Agriculture, the administrator of the United States

Warehouse Act. The federal act is merely a federal warehouse receipts act. Congress has not created a utility regulatory statute and has not authorized the exercise of any affirmative regulatory powers.

The Circuit Court of Appeals for the Seventh Circuit has misconceived the doctrine of supersedure and invalidation of state statutes. Apparently the existence of a federal statute in the same general field, even though the precise powers found in state regulation do not exist on the federal level, was held sufficient to strike down the state comprehensive authority. No demonstration of irreconcilable conflict was made.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Company, a partership.

September 4, 1946.

BRIEF IN SUPPORT OF PETITION.[3]

I.

Federal nullification of state authority results only where a precise coincidence of regulation or an irreconcilable conflict is clearly demonstrated.

The constitutional power of the state and federal governments separately to regulate public grain warehousemen is not questioned. It has been repeatedly held that public warehouses are matters of local and domestic concern which may be regulated by the states as an exercise of police power: *Munn* v. *Illinois*, 94 U.S. 113, 135 (1876); *Townsend* v. *Yeomans*, 301 U.S. 441, 458 (1937); *Davies Whse. Co.* v. *Bowles*, 321 U.S. 144, 148-9 (1944). We concede that the functions of such public warehouses affect interstate commerce, and therefore Congress may constitutionally invade this otherwise local field to protect such commerce. But Congress has only provided a circumscribed and limited invasion. The questions here presented are: Has Congress by the United States Warehouse Act actually provided regulation of warehousing rates, services and financial transactions so as to enable Rice to find in federal authority the relief prayed before the Illinois Commerce Commission? Has Congress provided for federal regulation exclusively and solely of federal licensed warehouses, to the point of excluding state control, even though the federal act is silent upon the particular subject matter of regulation?

The court is here being asked to strike down all state regulation of federal licensed warehouses, although it is

[3] Statement, jurisdiction and questions presented, which are set out in the petition, will not be repeated here.

conceded that some of the issues raised before the state commission are not within the purview of federal authority. The injunction, we contend, is sought as a means of escaping *all* regulation. There is no problem here of dual or alternative regulation. The secretary is entirely without power to grant any of the relief prayed in the Rice complaint. No such federal regulation and control has been exercised in the thirty years that the federal statute has been in effect. As a consequence, to strike down state authority would be to abolish effective and affirmative regulation of public grain warehouses.

This court has repeatedly held that an intent by Congress to supersede and invalidate the exercise of the state's police power must be clearly manifested and will never be presumed or implied: *Illinois Central R. R. Co.* v. *Public Utilities Commission*, 245 U. S. 493, 510 (1918); *Reid* v. *Colorado*, 187 U. S. 137, 148, 153 (1902); *Railway Mail Assn.* v. *Corsi*, 326 U. S. 88, 97 (1945). In determining whether the federal act supersedes an otherwise valid exercise of state powers, this court has required that there be a precise coincidence of federal and state regulatory control, or in the absence of federal authority over the precise subject matter, then state authority will be superseded by federal action only if there exists a repugnance or conflict between the two acts so "direct and positive" that they cannot be "reconciled or consistently stand together." Congress may regulate in the general field, but may circumscribe its authority and occupy only a limited portion of that field. In that event the states are free to regulate outside the limited field subject to federal authority: *Sinnot* v. *Davenport*, 22 How. (U. S.) 227, 243 (1859); *Kelly* v. *Washington*, 302 U. S. 1 (1937); *Townsend* v. *Yeomans*, 301 U. S. 441, 454 (1937); *Savage* v. *Jones*, 225 U. S. 501, 532-3 (1912); *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945).

The Circuit Court assumes that even though express authority is not granted the federal agency, such authority will be implied and will serve to supersede expressly granted state powers. (Rec. 122) But this view, we contend, misconceives the principles governing the interrelations of state and federal authority, and does violence to the oft announced doctrine that administrative agencies may exercise only such powers as are expressly delegated.

II.

The federal act is limited and circumscribed in its provisions, scope and purpose.

Congress enacted the United States Warehouse Act in 1916 for the purpose of establishing a warehouse receipt which would be accepted as collateral on loans. The act in nature, form and intent is essentially and solely a federal warehouse receipt act. Its aim was to avoid certain gross dishonesties that had been previously practiced by warehousemen, such as the issuance of receipts without the products having been stored, failure to cancel receipts after having made delivery, or returning an inferior grade or smaller quantity of the stored commodity.

The act was not intended to and does not constitute a utility regulatory statute. There is a complete absence of any delegation of affirmative regulatory authority to the secretary. The federal act fails to deal with the following subjects, which are of fundamental importance to any regulatory system:

a. No authority is granted to issue regulatory orders and directives.

b. No requirements are made for the preparation of findings of fact by the secretary.

c. The act contains no legislative standards governing administrative policy.

d. No general power is delegated to the secretary to conduct hearings.

e. No provision is made for rehearings or for judicial review.

The method employed by Congress to carry out its objective furnishes a key to the highly circumscribed character of federal authority. The limited control exercised by the United States Warehouse Act is acquired through the issuance of a *voluntary* or *permissive* license. No warehouseman, even though exclusively storing grain for interstate commerce, is required to secure a license to conduct his operations, but if he so desires, he may apply for and obtain such a license. The only sanction that can be applied under the act is publication of the results of an investigation or suspension or revocation of a license. In the latter event, a warehouseman is entirely free to conduct his business, even under the very terms which led to revocation, without a federal license.

We fail to see how a permissive or voluntary federal licensing system could nullify any state requirement, for in that event state sovereignty would not be nullified by Congress, but by the whim of the warehouseman.

This court on several occasions has referred to the United States Warehouse Act as a limited and circumscribed statute which afforded only a "measure of control": *Federal Compress & Whse. Co.* v. *McLean*, 291 U. S. 17, 22-3 (1934); *United Brokerage Co.* v. *Jensen*, 322 U. S. 202, 207-8 (1944); *Townsend* v. *Yeomans*, 301 U. S. 441, 457 (1937).

The principal reliance of the warehousemen for their position that the federal act is exclusive and precludes any state regulation over federal licensed warehouses is Section 29 of the United States Warehouse Act, as amended in 1931, which reads:

> "Sec. 29. That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

But this section cannot be distorted to achieve the results sought. First, the opening phrase of the section expressly provides that the secretary may cooperate with state officials charged with the enforcement of state warehouse laws. By this provision recognition is given to the continued existence of state laws which would operate upon federally licensed warehousemen, and thus provide an opportunity for cooperation. This plain language negatives any alleged congressional intent to preempt the entire field and exclude the states. A similar preservation of state authority is made in Section 20 of the act.

Second, the reference to the exclusive power and authority of the secretary is limited to the authority "conferred * * * under this Act". In other words, specific matters of control which have been delegated to the secretary are dominant and supreme in case of conflict with state authority. But this language cannot be expanded to grant the secretary exclusive regulatory power over all phases of warehousing operations and all manner of regulatory problems, even though the power was not delegated to the secretary. This clause was given its limited and obvious meaning in *U. S.* v. *Hastings*, 296 U. S. 188, 199 (1935), where this court said:

> "While the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act, * * *."

Third, the 1931 amendment did not add any regulatory provisions affecting warehouses. The secretary's jurisdiction was not broadened one whit. Certainly, with forty-one states regulating in the field, Congress would have plainly and expressly provided for invalidation of state regulation if that had been its intent, and would have broadened federal authority. At least Congress would have carefully considered the issue and debated the question, but the legislative history is devoid of any such consideration or debate. The committee reports on the 1931 amendments were unanimous and the debate cursory.[4]

Prior to the amendment the federal authority was entirely subservient to state warehouse regulation, and in case of conflict the statute specifically required that the federal act give way. Under such circumstances the minimum federal requirements for the establishment of dependable warehouse receipts could be and were destroyed by state laws which permitted loose practices. The limited purpose of the 1931 amendment was to reverse this situation and restore the normal dominance of federal authority where expressly granted and exercised.

There is a complete absence of federal power to grant the specific regulatory relief prayed. The warehousemen's position is based not upon a coincidence of state and federal authority, but upon claimed conflict with the policies allegedly sought to be accomplished by the federal act. We do not believe it can be seriously argued that effective state utility regulation would infringe upon the policy of the United States Warehouse Act in promoting the integrity of warehouse receipts. The federal act assures that a receipt holder will have grain of a contract grade in store

[4] 72 Cong. Rec. Pt. 8 p. 8530; 72 Cong. Rec. Pt. 8 p. 8529; 74 Cong. Rec. Pt. 6 p. 6138; S. Rept. No. 1775 to 71 Cong. 3rd Sess.; H. Rept. 4 to 71st Cong. 1st Sess.

when called for, but the state act affords additional protection in the public interest—the fixing of fair and nondiscriminatory rates through the regulatory rate making process, the elimination of discriminatory practices, the assurance and preservation of adequate and safe service and facilities, the prevention of abandonment of essential public services and the protection of the financial strength of these warehousing institutions. Such state activity clearly furthers the underlying congressional purpose, and in no respect can be construed as "plainly and palpably infringing upon federal policies".

III.

The major state regulatory issues invoked.

A. *Enforce state provisions requiring prior commission approval of: (1) Contracts and arrangements with affiliates and other utilities; (2) sales, leases and encumbrances of utility properties or assets; (3) security issues.*

Such regulation has for its purpose the prevention of unwarranted drains on utility funds or the creation of onerous financial structures which would exert financial pressure upon the utility and thus affect its ability to render adequate service at reasonable rates. The warehousemen concede that no comparable authority is contained in the United States Warehouse Act.

The Circuit Court, while recognizing this fact, superseded state regulation with the following remarks (Rec. 122):

> "While we find nothing in the Act which expressly relates to such matters, we think, for the reasons already stated, that the Secretary has implied authority to deal therewith."

State authority is thus nullified, although federal regulation is completely absent, a holding which violates the oft-announced principles of supersedure.

B. *Fix and determine just and reasonable rates:*

The warehousemen concede that Congress has not delegated authority to the secretary to establish and determine rates. The federal act is devoid of any language even remotely delegating rate making powers. The importance of the function and the traditional language used for such delegations over a period of many years prevents the implication of such powers where not specifically and expressly provided: *Interstate Commerce Commission* v. *Cincinnati, etc. R. Co.*, 167 U. S. 479, 505-6 (1897). The detailed and positive Illinois provisions granting not only the power to fix and determine reasonable rates, but surrounding that power with the collateral functions necessary to its effective exercise, are an example of actual rate making delegations.

The claim is made that despite this lack of rate making power in the secretary, state control is nevertheless superseded since the secretary is authorized to revoke or suspend a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered". (Section 25) To implement this provision, regulations were adopted requiring licensees to file a copy of their rates and any changes therein with the secretary.

A rate on file is not a rate approved or determined by the administrative agency: *Interstate Commerce Commission* v. *Cincinnati, etc. R. Co.*, 167 U. S. 479 (1897); *Cleveland* v. *Hope Natural Gas Co.*, 44 P.U.R. (n.s.) 1, 33 (F.P.C. 1942). No conflict with the existing positive state rate making powers exists. The secretary may revoke a license

because an exorbitant rate was charged in the past. The secretary cannot determine and prescribe what will constitute a reasonable rate for the future. In fact, the secretary is entirely without any affirmative powers. He is not authorized to issue any order or directive under any circumstance, except that he may revoke a voluntary license. If a license is revoked, the warehouseman is still free, so far as federal authority is concerned, to conduct his business and charge whatever rate he chooses. No federal penalties are provided. The secretary can only take back his voluntary and permissive license.

But what if the state, acting pursuant to the Rice complaint, reduced storage rates? The federal regulation—not the statute—requires storage rates and changes therein to be filed. There is no conflict. The warehousemen can freely comply with the federal regulation by performing the purely administrative function of filing the newly prescribed rate with both the federal and state agencies. It is unreasonable to assume, as the Court of Appeals does (Rec. 119), that the state utility commission would fix a rate which the secretary would consider exorbitant. The prayer in this proceeding is for a reduced rate. The assumption contemplates that the state, with its elaborate statutory machinery and expert utility regulatory staff, would not fix just and reasonable rates; moreover it assumes that the secretary would do so, even though he has never regulated rates, and is neither equipped nor has the statutory authority to perform such a function.

C. *Enforce the state constitutional provision against occupying the dual and conflicting positions of public grain warehouseman and at the same time grain dealer.*

Because public warehousemen have been in direct competition with their storage customers, innumerable forms

of discrimination and self-preference have been evolved. The vice of duality of functions by quasi-public institutions has long been recognized as against public policy, as witness the separation of railroads from commercial enterprises competing with their shippers.

Federal sanction is allegedly found by the warehousemen in Section 18 of the federal act, which prescribes the contents of warehouse receipts and requires the fact of ownership of grain by the warehouseman to be shown. This provision does not constitute federal authorization to public warehousemen to deal in grain. The fact of ownership of grain by the warehouseman himself was merely recognized as a *suspicious circumstance* which had to be noted as additional protection to the receipt holder. No direct and positive federal approval exists to raise an irreconcilable conflict with the state prohibition.

Even where the federal government permits a practice, state prohibitions, based upon sound public policy, have been sustained in the face of claimed supersedure: *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933); *Minnesota, ex rel. Whipple* v. *Martinson*, 256 U. S. 41 (1921).

D. *Eliminate discriminatory rates and practices.*

Serious discriminatory rates and practices of an unethical and unbusinesslike character are sought to be prevented. The state commission is fully equipped and legislatively empowered to deal with these issues. The warehousemen rely almost entirely upon Section 13 of the United States Warehouse Act to nullify this express and affirmative state regulation. That section reads:

> "That every warehouseman conducting a warehouse licensed under this Act shall *receive* for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him

which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, *without making any discrimination between persons desiring to avail themselves of warehouse facilities.*" (Emphasis supplied.)

Obviously only one requirement is imposed, and that is that the warehousemen accept grain for storage if space exists, without discriminating between those who want storage space. The word "receive" is the only word of command, and "discrimination" refers only to the unfair refusal to store grain tendered. All other forms of discrimination are left untouched. In any event, while a requirement may be imposed upon the warehouseman, concededly the secretary is not granted the affirmative authority to eliminate any form of discrimination. He cannot fix and determine rates or practices that are fair and nondiscriminatory. No conflict between the two systems exists.

E. *Establish safe, adequate and efficient public grain warehousing service and facilities.*

The state commission was requested to compel the establishment of safe and adequate warehousing service and facilities, and to order improvements in such service and facilities—a function which is positively delegated by the state statute. It is urged supersedure results by the grant to the secretary by Section 3 of the right to determine whether the warehouse for which a permissive license is sought is "suitable" for the proper storage of agricultural products. "Suitable," as Section 4 clearly demonstrates, means fit for the storage of the particular agricultural product involved—that is, grain, cotton or tobacco, etc. The adequacy of warehousing service, the right to require improvements in such service and facilities, is not dealt with in the federal act.

It is also contended that federal power is found in the authorization to the secretary:

> "* * * to prescribe within the limitations of this Act, the duties of the warehousemen * * * with respect to their care of and responsibility for agricultural products stored therein."

This delegation is clearly limited to further the integrity of warehouse receipts, and not to prescribe standards of service and improvements of facilities.

In any event, no claim is made that the secretary can compel changes and improvements in service or facilities. It is only urged that the existing warehouses have been approved. This limited federal function, even if it exists, is not in conflict with the affirmative authority granted the state commissions to *order and direct safe,* adequate, proper and improved services. Conclusive on this point is *Atchison, T. & S. F. R. Co.* v. *Railroad Commission,* 283 U. S. 380, 390, 392-3 (1931), where a sharp distinction was made between the power of a state commission to *require or compel* the improvement of service (construction of a union terminal), and the lesser requirement of federal commission *approval* before the project is instituted. Federal control in that case was held by this court not to supersede state affirmative regulation.

F. *Prevent unwarranted abandonment of public grain warehouse service and capacity.*

An application to the state commission must be made and approval secured before utility services may be abandoned. No state authority exists to compel abandonment. While no federal control on this issue exists, the warehousemen urge that the secretary's power to suspend or revoke a license requires state supersedure. The Court of Appeals holds that where a federal warehouseman de-

sires to abandon his service, "he could only do so by satisfying the bond and surrendering his license", then "control would revert to the state". (Rec. 122) In other words, if a warehouse is abandoned, a license is revoked or suspended and then state control takes hold. But the warehouse service is gone—there is nothing and nobody to regulate. The public's interest in the maintenance of adequate public grain warehousing service is irreparably prejudiced.

The federal act contains no provisions comparable, and certainly none which conflicts with the invoked state authority.

Conclusion.

It is respectfully submitted that the public interest will be promoted by the granting of this petition and the decision by this court of the question involved.

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Company, a partnership.

September 4, 1946.

APPENDIX A.

UNITED STATES WAREHOUSE ACT.

[39 United States Statutes at Large, page 486, as amended July 25, 1919, February 23, 1923, and March 2, 1931.]

That this Act shall be known by the short title of "United States warehouse Act."

SEC. 2. That the term "warehouse" as used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt.

SEC. 3. That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein.

SEC. 4. That the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or

warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided*, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 5. That each license issued under Sections 4 and 9 of this Act shall terminate as therein provided, or in accordance with the terms of this Act and the regulations thereunder, and may from time to time be modified or extended by a written instrument.

SEC. 6. That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States to secure the faithful performance of his obligations as a warehouseman under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, and may, in the discretion of the Secretary of Agriculture, include the requirements of fire and/or other insurance. Whenever the Secretary of Agriculture, or his designated representative, shall determine that a previously approved bond is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

SEC. 7. That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Sections 6 or 9, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

SEC. 8. That upon the filing with and approval by the Secretary of Agriculture, or his designated representative, of a bond,

in compliance with this Act, for the conduct of a warehouse, such warehouse may be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded shall be used until a bond, such as provided for in Section 6, has been filed with and approved by the Secretary of Agriculture, or his designated representative, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked.

SEC. 9. That the Secretary of Agriculture, or his designated representative, may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products, and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act, and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act, and such rules and regulations, to the same extent as is provided for warehousemen licensed hereunder.

SEC. 10. That the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and for each license issued to a warehouseman or to any person to classify, inspect, grade, sample, and/or weigh agricultural products stored or to be stored under the provisions of this Act, the Secretary of Agriculture, or his designated representative; may charge, assess, and cause to be collected a reaonable fee. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts.

SEC. 11. That the Secretary of Agriculture, or his designated representative, may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample, or classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to condition, grade, or otherwise and to certificate the condition, grade, or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample, or classify and weigh the same and to certificate the condition, grade, or other class and

the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him.

SEC. 12. That any license issued to any person to inspect, sample, or classify, or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture, or his designated representative, whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify, or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatever. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

SEC. 14. That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 15. That any fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act.

SEC. 16. That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and

grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades.

SEC. 17. That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

SEC. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided*, That if the precise amount of

such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided*, That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: *Provided, however*, The Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

SEC. 19. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined: *Provided*, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate.

SEC. 20. That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided*, That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act.

SEC. 21. That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored

therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipts; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman.

SEC. 22. That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued.

SEC. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder.

SEC. 24. That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings.

SEC. 25. That the Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 26. That the Secretary of Agriculture from time to time may publish the results of any investigations made under Section

3 of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor.

SEC. 27. That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto.

SEC. 28. That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act.

SEC. 29. That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This Act shall not be construed so as to limit the operation of any statute of the United States relating to warehouses or to warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

SEC. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this Act, or who shall violate or fail to comply with any provision of Section 8 of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court,

and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall wilfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade, or weigh fraudulently, any agricultural product stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court.

SEC. 31. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the moneys appropriated by this Act to pay the salaries and expenses thereof.

SEC. 32. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 33. That the right to amend, alter, or repeal this Act is hereby expressly reserved.

COMMODITY EXCHANGE ACT.

Section 5(a)(7) (49 Stat. 1491).

"Each contract market shall—

* * *

"require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

APPENDIX B.

List of States which Provide Warehouse Regulation

State	Statute	Type of Warehouse	Rate Regulation
Alabama	Code (1940) Title 2 Secs. 568 et seq.	Cotton and other articles of value.	
Arizona	Code (1939) Secs. 52-901 to 52-905	Cotton, wool.	
Arkansas	Dig. Stat. (Pope, 1937) Secs. 14374 et seq.	Grain and others.	x
California	Gen. Laws (Deering 1937) Act. No. 6386, Secs. 1 et seq.	Grain and others.	x
Delaware	Rev. Code (1935) Secs. 831 et seq.	Food.	
Georgia	Code (1933) Secs. 5-301 et seq. 93-317; 111-1 et seq.	Grain, cotton and others.	x
Idaho	Code Ann. (1932) Secs. 67-202 et seq.	Grain and others.	x
Illinois	Ill. Rev. Stat. (1945) Ch. 111⅔, Sec. 10; Secs. 119 et seq.; Ch. 114, Sec. 189 et seq.	Grain, food, personal property.	x
Indiana	Stat. Ann. (Burns, 1933) Secs. 67-201 et seq.; 67-512	Grain and others.	x
Iowa	Laws (1943), Ch. 246 Sec. 1 et seq.	Grain and others.	x
Kansas	Gen. Stat. Ann. (1935) Secs. 34-101, 223 et seq.	Grain and others.	x
Kentucky	Rev. Stat. (1944), Secs. 248.010 et seq.; 251.010 et seq.; 359.140.	Grain, tobacco.	x
Louisiana	Gen. Stat. (Dart's, 1939) Secs. 9855 et seq.; 9934 et seq.	Grain and others.	x
Maine	Rev. Stat. (1944), Ch. 40, Sec. 15, et seq.	Grain and others.	x
Maryland	Code. Ann. (Flack, 1939) Art. 43, Sec. 221; Art. 48, Secs. 42, et seq.	Food and tobacco.	
Massachusetts	Ann. Laws (1933) Ch. 105, Secs. 1 et seq.	Personal property.	
Michigan	Stat. Ann. (1937), Secs. 19.491 et seq.	Grain and others.	
Minnesota	Stat. (1941) Secs. 231.01 et seq.; 232.01 et seq.; 233.01 et seq.	Grain and others.	x
Missouri	Rev. Stat. Ann. (1944), Secs. 14685.24; 15476 et seq.	Grain and others.	x
Montana	Rev. Code (1935), Secs. 3579, 3585 et seq.	Grain and others.	x

State	Statute	Type of Warehouse	Rate Regulation
Nebraska	Rev. Stat. (1943), Secs. 88-201 et seq.	Grain and others.	x
Nevada	Comp. Laws (1929), Secs. 6106 et seq.	Grain and others.	x
New Hampshire	Rev. Laws (1942), Ch. 205, Secs. 1 et seq.	Goods, wares and merchandise.	
New Jersey	Stat. Ann. Secs. 24:9-1 et seq.	Food.	
New Mexico	Stat. Ann. (1941), 53-901 et seq.	Grain and others.	
New York	Laws of N. Y. (Thompson, 1939) Gen. Bus. Laws, Sec. 396, Agri. & M., Sec. 230(2), Alco Bev. Co. 3 (38).	Grain in cities of over 100,000 and others.	x
North Carolina	Gen. Stat. (1943) Secs. 106-430 et seq.; 106-452 et seq.	Cotton, leaf tobacco.	x
North Dakota	Rev. Code (1943), Ch. 60-02.	Grain and others.	x
Ohio	Gen. Code Ann. (Page, 1937) Secs. 1155-7, 6041.	Tobacco, food.	
Oklahoma	Stat. (1941) Tit. 81 Secs. 1 et seq.	Grain and others.	x
Oregon	Comp. Laws (1940) Secs. 60-302 et seq.	Grain and others.	x
Pennsylvania	Pa. Stat. (Purdon, 1936) Tit. 31, Sec. 952.	Food.	
South Carolina	Code of Laws (1942), Secs. 6466 et seq., 7197.	Cotton, tobacco.	x
South Dakota	Code (1939) Secs. 52.201, 60.0304 et seq., Law (1945) Ch. 245, Sec. 1.	Grain and others.	x
Tennessee	Code Ann. (Williams, 1934) Secs. 6476, 6498.	Tobacco.	x
Texas	Stat. (Vernon, 1936), Arts. 5568, 5601.	Grain and others.	x
Utah	Code Ann. (1943), Titles 76-2-1, 76-3-1.	Grain and others.	x
Virginia	Code (1942), Ch. 51A, Sec. 1228(b); Ch. 58, Sec. 1348 et seq.	Food and tobacco.	x
Washington	Rev. Stat. Ann. (Remington, 1933), Secs. 6987 et seq.; 11569 et seq.	Grain and others.	x
Wisconsin	Stat. (1943), Secs. 100.13, Laws (1945), Ch. 443.	Grain and others.	x
Wyoming	Rev. Stat. (1931), Secs. 5-602 et seq.; Supp. (1940), Sec. 5-1307; Laws (1943), Ch. 12, Secs. 1, 7.	Grain and others.	x
	Totals	41	30

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL.,

Petitioners,

VS.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION OF ILLINOIS COMMERCE COMMISSION, ET AL., FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
208 South LaSalle St., Chicago 4, Ill.,
Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

CHAPPLIN-GHEALY COMPANY, CHICAGO 365

INDEX.

PAGE

ARGUMENT:

I. The Federal District Court Lacked Jurisdiction Over This Complaint Because of the "Johnson Act Amendment" to the Judicial Code. Even Apart from the Provisions of that Amendment and If Jurisdiction Technically Existed, Its Exercise Should Have Been Forborne.... 12

II. Even If Federal Equity Has No Jurisdiction, This Court May Decide the Case Upon the Merits Adversely to Respondents; and This Is True Even Though It May Not Decide the Case Favorably to Them..... 15

III. There Is No. Repugnancy Between the Federal Warehouse Act and the Law of Illinois..... 17

IV. There Is No Repugnancy Between the Commodity Exchange Act and the Law of Illinois..... 25

Appendix I 41

Appendix II 43

Appendix III 57

Appendix IV 75

Conclusion 40

Prayer for certiorari..... 8

Reasons relied upon for the allowance of the writ... 7

Statement of the case..... 9

Statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review 6

Summary and short statement of the matters involved 1

The jurisdictional questions..... 6

The questions presented..... 5

The substantive questions..... 5

Cases Cited.

Atchison Ry. v. Railroad Comm., 283 U.S. 380..... 34
Atlantic Coast Line v. Georgia, 234 U.S. 280..... 34
Anderson National Bank v. Luckett, 321 U.S. 233.... 36
Allen-Bradley Local v. Wisconsin Emp. R. Bd., 315 U.S. 740 36
Carey v. South Dakota, 250 U. S. 118..... 32
Colegrove v. Green, 66 S. Ct. 1198..... 16
Corn Products Refining Co. v. Eddy et al., 249 U.S. 427 32
Cloverleaf Butter Co. v. Patterson, 315 U.S. 148..... 37
Dickson v. Uhlmann Grain Co., 288 U.S. 188.....26, 33
Hartford Indemnity Co. v. Illinois, 208 U.S. 155..... 33
Illinois Central RR. Co. v. Com., 245 U.S. 493..... 23
Kelly v. Washington, 302 U.S. 1..... 36
Mintz v. Baldwin, 289 U.S. 346..... 33
Merchants Exchange of St. Louis v. Missouri, 248 U.S. 365 32
Maurer v. Hamilton, 309 U.S. 598..... 35
Minnesota ex rel. Whipple v. Martinson, 256 U.S. 41.. 36
Missouri Pacific R. Co. v. Norwood, 283 U.S. 249.... 34
Natural Gas Pipeline Co. v. Slattery, 302 U.S. 300.. 14
Northwestern Bell Tel. Co. v. Nebraska, 297 U.S. 471.. 23
Pacific States Co. v. White, 296 U.S. 176..... 33
Parker v. Brown, 317 U.S. 341..... 34
Peoples Gas, Light & Coke Co. v. Slattery, 373 Ill. 31.. 13
Railway Mail Association v. Corsi, 326 U.S. 88..... 22
Reid v. Colorado, 187 U.S. 137.....23, 31
Savage v. Jones, 225 U.S. 501..... 31
Sligh v. Kirkwood, 237 U.S. 52..... 32
South Carolina State Highway Dept. v. Barnwell, 303 U.S. 177 34
Sprague, et al., Trustees of Chicago Rapid Transit Co. v. Biggs, 390 Ill. 537..... 13

Southern Pacific Co. v. Arizona, 325 U.S. 761..... 35
State v. Christopher, 318 Mo. 225, 2 S.W. (2d) 621.. 27
Terminal Railroad v. Brotherhood Trainmen, 318 U.S. 1 .....23, 35
Townsend v. Yeomans, 301 U.S. 441..... 33
Union Brokerage Co. v. Jensen, et al., 322 U.S. 202..27, 36
United States v. Hastings, 296 U.S. 188..... 21
Welch Co. v. New Hampshire, 306 U.S. 79..... 35
Wood v. Broom, 287 U.S. 1..... 15

STATE STATUTES CITED.

Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a, pp. 2714-2718 (Appendix II) 7, 18, 43-54
Illinois Public Utilities Act, Ill. Rev. Stats. 1945, Ch. 111⅔, pp. 2607-2668.....7, 13, 19
Illinois Warehouse Receipts Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 233-292, pp. 2709-2714 (Appendix III) 7, 19, 57-72
Illinois Constitution of 1870, Art. XIII, Ill. Rev. Stats. 1945, p. 31 (Appendix I).....7, 17, 41-42

FEDERAL STATUTES CITED.

Johnson Act Amendment, Sec. 24 (1) Judicial Code, (Title 28, U.S.C.A. Sec. 41 (1))..... 12
United States Commodity Exchange Act, (Tit. 7, U.S.C.A. Secs. 1 et seq.).....2, 4, 25
United States Warehouse Act, as amended, (Tit. 7, U.S.C.A. Secs. 241 et seq.).....2, 20
United States Judicial Code, Sec. 240 (Title 28, U.S.C.A. Sec. 347)..... 6
United States Commodity Exchange Act, In full—(Appendix IV) 75-82

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No.

ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL.,

Petitioners,

VS.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Summary and Short Statement of the Matters Involved.

Petitioners, who are the Illinois Commerce Commission, its members, and the Attorney General of Illinois, seek two writs of *certiorari* from this court to review two judgments of the United States Circuit Court of Appeals for the Seventh Circuit in two companion cases, *Great Lakes Elevator Corporation, et. al.,* v. *Illinois Commerce Commission, et al.,* and *Board of Trade of the City of Chicago, a corporation,* v. *Illinois Commerce Commission, et al.,*

which were decided by that court in a single opinion although a separate judgment was rendered in each case.[1]

In the *Great Lakes* case the Circuit Court of Appeals, reversing a decision by Judge Igoe of the District Court for the Northern District of Illinois, held that the United States Warehouse Act, as amended,[2] so far constituted a "preemption of the field" of the regulation of grain warehouses voluntarily licensed under the federal act as to supersede Illinois constitutional provisions and Illinois statutes, cited and summarized under the statement of jurisdiction *post*, which concededly regulated such warehouses prior to the intervention of the Federal Act in question.

In the *Board of Trade* case the Circuit Court of Appeals, reversing Judge Igoe's decision in the District Court, held that the United States Commodity Exchange Act[3] similarly implied supersedure of Illinois statutory provisions which before the advent of the Commodity Exchange Act had concededly been applicable to the Chicago Board of Trade insofar as was necessary to affect the

---

(1) Since the same opinion decides both cases and since some of the issues are identical while the other issues, although distinct in the two cases, are so similar and so intimately related that they must be considered comparatively, we file an identical petition and an identical brief in both cases.

Daniel F. Rice and Company, which was a co-defendant below with the instant petitioners and whose interests will hereafter appear, is presenting independent petitions for certiorari concurrently with our presentation of the instant petitions. We have been privileged to see a draft of Rice's petitions and supporting briefs and shall avoid needless duplication of statement and argument as far as possible; but we earnestly present certain contentions which Rice and Company do not press or do not conceive as we conceive them and therefore we cannot join in their petitions.

The Attorney General was not formally impleaded as a defendant in the *Board of Trade* case and so technically is not a party petitioner in that case.

(2) The United States Warehouse Act, as amended, (Tit. 7, U. S. C. A. Secs. 241 *et seq.*

(3) United States Commodity Exchange Act, (Tit. 7, U. S. C. A. Secs. 1 *et seq.*) The full text of the Act appears as Appendix IV hereto.

Board's activities incidentally to the matters concerning warehouse receipts.

Each judgment sustained a complaint to enjoin the Illinois Commerce Commission from continuing pending investigation or regulation of practices of federally licensed warehousemen although such proceedings had not culminated in any final order on the part of the Commission and although the plaintiffs (respondents here) had not sought admittedly available statutory or equitable remedies in the courts of Illinois.

The subject matter of the Illinois Commission's investigation and contemplated regulation was warehouse rates, alleged discriminatory practices, the commingling of proprietors' grain with that of customers', public warehouse service and facilities, warehousemen's financing, issuance of securities and capital structure, transactions with affiliated and other utilities, and kindred matters. These activities are concededly not fully and actually regulated at the present time either by the federal act in question or by regulations promulgated under it; nor does either federal act expressly void state laws and powers.

Some of these phases of activity (*e.g.*, financing, securities and capital structure) are not even subject to the authority of the Secretary of Agriculture under any language appearing in the federal act. As to other matters, such as some aspects of service and facilities, the Secretary has authority under the Act to take administrative action that could be inconsistent with orders that the Illinois Commission might make; but no conflict of regulation has as yet arisen, so that there is only a potential and not an actually precipitated conflict between possible future state and federal directives. With respect to the very important matter of rates, the situation is (*Brief, post*) that the Secretary has *no* express author-

ity to *prescribe* rates but *does* have authority to *disapprove* rates even though they have been installed by a state commission. [Of course we concede that in the case of an actual conflict between a state order or regulation and a valid order or regulation by the Secretary of Agriculture, whether with respect to rates or other matters, the latter would prevail.]

The Commodities Exchange Act does not provide for the general and comprehensive regulation of grain exchanges. (See *Brief, post.*)

The Circuit Court of Appeals was of the view, which is challenged here, that the federal legislation in question evinces a congressional intention to supersede state regulatory process with respect to the matters indicated above, both as to activities which the Secretary may regulate but has not regulated and as to matters which he has no authority to regulate, it being that Court's view that there was an implied preemption of the field by total occupation.

The Circuit Court of Appeals also rejected the petitioners' contentions that plain, speedy and adequate remedies existed in the state courts for the vindication of any rights that the respondents (plaintiffs) had, that therefore federal jurisdiction would not have been exercised even before the Johnson Act Amendment[4] to the Federal Code, and that the District Court's jurisdiction over the instant cases is specifically withdrawn by that amendment as well as petitioners' contention that even before the Johnson Act, the exercise of federal jurisdiction should have been forborne because state remedies had not been exhausted.[5]

---

[4] (1) Johnson Act, Sec. 24(1) Judicial Code (Tit. 28, USCA, Sec. 41(1) (quoted in full in the Brief, *post*, Point I).

[5] Petitioners also contended below that respondents invoked the federal constitution as nullifying state legislation and therefore a three judge court should have been convoked. But that contention is abandoned here because further study has shown it to be probably

The foregoing is deemed a sufficient "Summary and Short Statement of the Matter Involved" to indicate the nature and importance of the questions presented, which questions are stated below. The histories of the cases are more fully narrated in the brief in support of these petitions.

The Questions Presented.

The decision of jurisdictional questions must logically precede a consideration of the merits. But where jurisdiction to decide the substantive questions depends upon whether the nature of those questions is such that the court has jurisdiction to entertain them, the substantive questions must necessarily be stated first.

The Substantive Questions.

The ultimate substantive questions sought to be presented are logically inseparable and composite. They may be stated as follows:

Do the Federal Warehouse Act and the Commodity Exchange Act impliedly so far "preempt the field" of federal warehouse regulation that the Illinois Commerce Commission may no longer regulate (or even investigate with a view to regulation) federally licensed warehouses with respect to rates, alleged or actual discriminatory practices, the commingling of proprietors' grain with that of customers', service and facilities, securities, financing and capital structure, transactions with other utilities and similar matters, and may no longer approve or disapprove rules or regulations of the Chicago Board of Trade affecting federally licensed warehouses?

---

not well conceived and in any event, now that the Circuit Court of Appeals has decided the case, nothing would be gained by insisting, even successfully, upon a remandment to the lower court only to bring this case before this court at a later date.

Dependent upon the ultimate issues stated above and directly implicit in them is a more specific but very important question that may be stated as follows:

Certain provisions under the Federal Warehouse Act and fully discussed in Rice & Company's brief provide in effect that *if* federally licensed warehousemen issue negotiable warehouse receipts for grain owned by them and stored in their warehouses, such warehouse receipts shall conform to certain regulations. But neither the federal act nor federal regulations promulgated thereunder expressly authorize federal licensees to store their own grain in their own warehouses or issue receipts therefor under any circumstances or conditions at all. The practice is legal in some states but illegal under the constitution of Illinois. Do the federal regulations which prescribe only *how* such receipts shall be issued *if* they may be issued legally under state laws intend by implication that such receipts *may be issued under federal authority notwithstanding state prohibition?*

The Jurisdictional Questions.

The jurisdictional questions are:

Inasmuch as it was conceded that adequate remedies existed at law or in equity in the state courts, was federal equitable jurisdiction inhibited by the Johnson Amendment to the Judicial Code?

Even apart from the Johnson Act, should equity have forborne the exercise of jurisdiction because state remedies were not resorted to?

Statement Particularly Disclosing the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review.

This court's jurisdiction is invoked under Section 240 of the United States Judicial Code (Title 28, U. S. C. A.,

Sec. 347). The validity of Illinois constitutional provisions and statutes in the presence of federal statutes as applicable to the facts in the instant cases is involved.

The federal statutes involved are the United States Warehouse Act, the Federal Commodity Exchange Act and those provisions of the Judicial Code granting, recognizing and limiting the jurisdiction of district courts (*Cited Ante*). The state constitutional provisions involved are Article XIII of the Illinois Constitution, which is wholly devoted to warehouses. The state statutes involved are the Illinois Public Utilities Act, the Illinois Grain Warehouse Act, the Illinois Warehouse Receipts Act. Official citations of these acts appear in the margin[6] with references to appendices to this petition in which some of the shorter acts are quoted in full. The Illinois Public Utilities Act empowers the Illinois Commission to regulate rates, services, facilities, financing and inter-utility transactions. See Brief, *post*, where its provisions are summarized to the extent necessary for argument and decision of the substantive issues if there is jurisdiction to decide them at all in these cases.

Reasons Relied Upon for the Allowance of the Writ.

The reasons relied upon as sufficient to invoke this court's writs of *certiorari* are that these cases present very important questions which have not been but should be decided by this court and that although the questions presented are of first impression here, nevertheless the decisions of the Circuit Court of Appeals are probably in

---

(6) Illinois Constitution of 1870, Art. XIII, Ill. Rev. Stats. 1945, p. 31. (Appendix I.) This constitutional provision has been held to prohibit the commingling of grain owned by a warehouseman with grain owned by his customers. *Hannah* v. *People*, 198 Ill. 77.
Illinois Public Utilities Act, Ill. Stats. 1945, Ch. 111 2/3, pp. 2607-2668.
Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a, pp. 2714-2718. (Appendix II.)
Illinois Warehouse Receipts Act, Ch. 114, pars. 233-292, pp. 2709-2714. (Appendix III.)

conflict with the teachings of this court's decisions most nearly in point. (See *Brief*, Points III and IV, *post*.)

Comment in emphasis of the great moment of the issues presented appears to be unnecessary but will be found in the separate petitions and briefs of Rice and Company.

The Circuit Court of Appeals, quoting averments from respondent Board of Trade's complaint, said:

> "The grain market at Chicago is the world's largest grain market. * * * Over 90% of the trade in grain futures contracts in the United States was transacted at the said market on the said Board of Trade, * * *." (*Great Lakes case*, Tr. 108; *Board of Trade case*, Tr. 244.)

The probable conflict between the decisions under review and this court's applicable decisions will appear from the brief in support of this petition and from the brief in support of Rice and Company's petition in the *Great Lakes* case.

Prayer for Certiorari.

Wherefore, petitioners pray that this court grant its writ of *certiorari* to review the judgment of the Circuit Court of Appeals in the case in which this petition is entitled.

ILLINOIS COMMERCE COMMISSION and JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE, and VAL J. WASHINGTON, members of said Commission, and GEORGE F. BARRETT, Attorney General of Illinois,

Petitioners.

By GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

STATEMENT OF THE CASE.

Daniel F. Rice & Company is a grain commission partnership and is a co-petitioner by separate applications for *certiorari* in these cases.

On July 28, 1944, Rice & Company filed a complaint with the Illinois Commerce Commission against public grain warehousemen in the Chicago terminal area. Because of Illinois statutory provisions, which confer jurisdiction upon the commission over rules and regulations of the Chicago Board of Trade insofar as such rules and regulations apply to warehousemen, the Board of Trade was joined as a party.

This petition charged the warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating with inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions, and with violation of an Illinois constitutional requirement forbidding warehousemen to store and issue receipts against their own grain in their own warehouses. It prayed an investigation in the premises and the entry of orders which would fix just and non-discriminatory rates, would eliminate discriminatory practices with respect to commingling of grain, would forbid arbitrarily preferential grain transactions, and would prohibit the manipulation and rebating of grain storage charges, preferential allocation of storage space, discriminatory delaying of the loading out of customers' grain to further the sale of the warehousemen's own grain, and similar unfair activities.

The petition further prayed administrative action which would insure reasonable, adequate and safe service and facilities. It also invoked the commission's state statutory jurisdiction over warehousemen's issuance of securities, financial operations and contracts with other utilities. (*Petition of Rice & Co. to Illinois Com. Com., Great Lakes* case, Tr. 16-24; *Board of Trade* case, Tr. 10-19.)

Motions to dismiss the proceedings were filed with the commission (*Great Lakes* case, Tr. 25-26; *Board of Trade* case, Tr. 20-24) and were denied (*Great Lakes* case, Tr. 27-28; *Board of Trade* case, Tr. 6.)

Thereupon several of the warehousemen (respondents here) who are licensed under the Federal Warehouse Act filed their complaint in the *Great Lakes* case in the District Court for the Northern District of Illinois (*Great Lakes* case, Tr. 2-15). The Board of Trade also filed its separate complaint in that court (*Board of Trade* case, Tr. 3-9).

Petitioners filed motions to dismiss in the nature of demurrers in each case (*Great Lakes* case, Tr. 40-42; *Board of Trade* case, Tr. 214-216), challenging the jurisdiction of federal equity because respondents had not resorted to admittedly available state statutory equitable remedies and, on the merits, resisting respondents' contentions that the federal legislation in question superseded Illinois constitutional, statutory and administrative authority in the premises.

The District Court overruled respondents' jurisdictional contentions but sustained their substantive contentions, held in each case, that there was no repugnance between state and federal law and dismissed both cases. (*Great Lakes* case, Tr. 88-93; *Board of Trade* case, Tr. 220-225.)

Respondents appealed to the Circuit Court of Appeals for the Seventh Circuit. In that court Rice & Company,

having won a victory on the merits and presumably not having the same interest that the Illinois Commission and the Attorney General have as a matter of policy in questions of federal equity jurisdiction over state agencies, failed to join the instant petitioners in their renewal in the Circuit Court of Appeals of the jurisdictional contentions. The instant petitioners reasserted in that court the contention that federal equity jurisdiction did not exist or that its exercise should have been forborne because admittedly adequate state remedies were not exhausted. Both Rice & Company and the instant petitioners argued that, if the District Court had jurisdiction to decide the case at all, its decision on the merits that state regulation had not been superseded was correct and should be affirmed. As has been indicated in the opinion, *ante*, the Circuit Court of Appeals sustained the District Court's jurisdiction but, also sustaining respondents' contention that federal acts in question superseded state authority, reversed the District Court on the merits.

These petitions for *certiorari*, as well as the companion petitions by Rice & Company, follow.

The facts pertinent to the question as to repugnancy of state and federal legislation, insofar as those facts appear in the pleadings or are properly the subject of judicial notice, are more appropriately considered in the Argument.

ARGUMENT.

I.

The Federal District Court Lacked Jurisdiction Over this Complaint Because of the "Johnson Act Amendment" to the Judicial Code. Even Apart From the Provisions of That Amendment and If Jurisdiction Technically Existed, Its Exercise Should Have Been Forborne.

Section 24(1) of the Judicial Code (Title 28 U.S.C.A., Section 41(1)) was amended in 1934 by the act known as the Johnson Amendment. It now provides as follows:

> "* * * Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any ratemaking body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing **and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state.** * * *" (Emphasis supplied.)

The commission proceedings which this suit seeks to enjoin involve "rates chargeable by a public utility" and the order initiating such proceedings has been made "after reasonable notice and hearing." The proceedings being

merely investigatory, they do not interfere with interstate commerce.

There can be no doubt that plain, speedy, adequate and efficient remedies exist in the courts of Illinois.

Section 68 of the Illinois Public Utilities Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 72), the pertinent provisions of which are quoted in the margin,[7] confers statutory power on the circuit and superior courts of Illinois to review administrative actions of the Illinois Commerce Commission.

Section 70 of the Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 74) provides that such statutory proceedings for review "shall have priority in hearing and determination over all other civil proceedings pending in such court, excepting election contests." Section 71 of the Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 75) provides that such court "may stay or suspend, in whole or in part, the operation of the Commission's rule, regulation, order or decision."

Thus there is an expeditious and adequate statutory mode of review. But in the rare case where this review might not be adequate or efficient to prevent confiscation, denial of due process or other serious injury, utilities have the classical remedy in equity by temporary and permanent injunction.

In *Peoples Gas, Light & Coke Co.* v. *Slattery*, 373 Ill. 31, and in *Sprague, et al., Trustees of Chicago Rapid Transit*

(7) "Within thirty days after the service of any order or decision of the Commission refusing an application for a rehearing of any rule, regulation, order or decision of the Commission, or within thirty days after the service of any final order or decision of the Commission upon and after a rehearing of any rule, regulation, order or decision of the Commission, any person or corporation affected by such rule, regulation, order or decision, may appeal to the circuit or superior court of the county in which the subject-matter of the hearing is situated, or if the subject-matter of the hearing is situated in more than one county, then of any one of such counties, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined. • • •."

Co. v. *Biggs,* 390 Ill. 537, the Supreme Court of Illinois held that the statutory review could not supersede the general equitable remedy of injunction in view of the provisions, not only of the Illinois and federal due process clauses, but of Section 12 of Article VI of the Illinois Constitution of 1870. That provision confers "original jurisdiction" in all law and equity cases upon circuit and superior courts. In the *Peoples Gas Co.* case, cited above, the court said that in Illinois "The legislature cannot validly limit those powers" (*i.e.,* the constitutional plenary powers of equity inherited from English chancery). In other words, in addition to a statutory remedy which must take precedence over all cases except election contest cases, respondents had a right under the Illinois constitution to *exactly the type of equitable remedy which they sought in the federal courts.*

There being no doubt that the instant cases were "suits to enjoin, suspend or restrain the enforcement, operation or execution of" an "order of administrative board or commission of a state" which "affects rights chargeable by a public utility," interstate commerce not being involved by a mere investigation, and there being no question that "a plain, speedy and efficient remedy may be had at law or in equity" in the courts of Illinois, this proceeding was categorically, peremptorily and absolutely interdicted by the Johnson Act.

This appears to be so plain and so simple that we do not argue the point further.

But even before the Johnson Act, this court specifically held that a utility had no right to invoke federal equity to prevent a mere investigation by a state commission. In *Natural Gas Pipeline Co.* v. *Slattery,* 302 U. S. 300, this court, speaking through Mr. Justice Stone, held, even

before the Johnson Act, that a public utility had no right to enjoin the Illinois Commerce Commission from an investigation of its accounts, *even though it was charged the utility was not subject to the Illinois Commission's jurisdiction in any respect and that submission to the investigation would unconstitutionally interfere with interstate commerce and afflict it with grave and irreparable injury.*

In view of the positive diction and unmistakable meaning of the Johnson Act, which inhibits federal equity suits affecting public utiljty rates where "a plain, speedy and efficient remedy may be had at law or in equity" in the state courts, the instant petitioners earnestly insist, notwithstanding the holding of the District Court and the Circuit Court of Appeals, that those courts were without jurisdiction to entertain this case or decide it upon the merits or should have forborne the exercise of jurisdiction.

II.

Even If Federal Equity Has No Jurisdiction, This Court May Decide the Case Upon the Merits Adversely to Respondents; and This Is True Even Though It May Not Decide the Case Favorably to Them.

Of course, this court need not decide the substantive question of repugnancy if it accedes to the instant petitioners' contention, urged under Point I, *ante,* that the Johnson Act inhibits jurisdiction of these cases. But even if this court sustains that contention or does not pass upon it, there is precedent in this court's decisions for pronouncement of a decision on the merits *provided that such decision is adverse to the plaintiff.*

In *Wood* v. *Broom,* 287 U. S. 1, this court had occasion to consider a suit asserting rights under an act of Congress

and seeking to restrain a congressional election. The defendants contended both that federal equity was without jurisdiction and that the plaintiffs' cause rested upon a misconception, pertinent to the substantive merits and not pertinent to jurisdiction, concerning the intent of Congress with respect to congressional elections. A majority of this court held that since they agreed with the defendants that the plaintiffs had no substantive rights, they would not pass upon the question of whether, had such rights existed, equity would have been impotent to vindicate them because of lack of jurisdiction. Thus the Court decided the substantive question adversely to the plaintiffs although it recognized a jurisdictional question that it declined to decide.

Following this decision, Mr. Justice Frankfurter's opinion in the case of *Colegrove* v. *Green*, 66 S. Ct. 1198, held that federal equity was powerless to enforce rights claimed by certain Illinois electors but also held that they had no such rights as they claimed. In other words, in *Wood* v. *Broom* a majority of the court, and in *Colegrove* v. *Green* a majority of the justices concurring in the court's judgment held that jurisdictional questions need not be reached where it appears that even if jurisdiction existed, the plaintiffs do not have the substantive rights that they claim.

But the converse is obviously not true. A court may *refuse* relief as well for lack of substantive merit as for jurisdiction. But before it may *grant* relief, not only must the case possess merit warranting such relief but jurisdiction to grant it must likewise exist.

In short, this court may, consistently with its precedents, reverse the Circuit Court of Appeals either because (A) it holds that the lower courts had no jurisdiction and therefore this court will not pass on the merits, (B) be-

cause it holds that respondents' contentions are without substantive merit and therefore need not consider the jurisdictional question, or (C) both because, as a majority of the justices concurring in opinion held in the *Colegrove* case, the lower courts had no jurisdiction and because there is no substantive merit in respondents' contention. But in order to affirm the Circuit Court of Appeals, it must decide both that the lower courts had jurisdiction and that respondents are right upon the merits.

III.

There Is No Repugnancy Between the Federal Warehouse Act and the Law of Illinois.

Before citing and arguing the intendment of this court's decisions which we deem most incisively pertinent in this case, we briefly consider, without argument other than that implied by terms of comparison and contrast, the federal and state laws involved.

COMPARISON AND CONTRAST OF THE SCOPE AND SUBSTANCE OF THE STATE AND FEDERAL LAWS IN QUESTION.

Grain warehousemen are subject to comprehensive regulation under Illinois constitutional and statutory provisions.

The whole of Article XIII of the Illinois Constitution of 1870 is devoted to warehouses. Its full text is reprinted as Appendix I. After defining all elevators or storehouses where grain "is stored for a compensation, whether the property stored be kept separate or not," declaring them to be "public warehouses" (sec. 1), it provides for the posting of sworn statements as to the amount and grade of each kind of grain stored, that warehouse receipts have been issued and are outstanding, and other infor-

mation (sec. 2). It gives the holders of warehouse receipts the right "always" to examine the properties stored (sec. 3). It provides that common carriers shall weigh or measure grain, receipt for the full amount and be responsible for the delivery of such full amount (sec. 4) and contains provisions requiring railroad companies to furnish facilities to warehouses (sec. 5). It makes it the duty of the General Assembly to pass all necessary laws to prevent the issuance of false or fraudulent warehouse receipts and to give full effect of this article of the constitution, which "shall be liberally construed so as to protect producers and shippers" (sec. 6). It provides that the General Assembly "shall pass laws for the inspection of grain, protection of producers, shippers and receivers of grain and produce" (sec. 7), and that the article shall not be construed to deny the General Assembly "the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies" (sec. 6). These provisions have been construed as prohibiting the commingling of a warehouseman's own grain with that of his customers. (*Hannah* v. *People*, 198 Ill. 77.)

The Illinois Grain Warehouse Act is reproduced in full as Appendix II. (Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a.) Its provisions are summarized in the margin.[8]

---

(8) After providing for the creation of local supervisory boards (secs. 2-5) it provides for official sealers who must supervise the storage of grain, ascertain the amounts stored by each owner, determine the exact grade and quality of the grain, ascertain that the "bin crib, granary or other receptable in which the grain is stored is satisfactory for the storage of grain, and that such receptable conforms to the regulations applicable thereto promulgated by the Department of Agriculture" (secs. 6, 7), and perform incidental functions prescribed by the act. Sections 12 and 13 define non-negotiable and negotiable certificates. Sections 14-19, which may be read at length in the appendix, contain provisions contended to protect the holders of such certificates against loss by destruction, deterioration or theft of grain, which is subject to such certificates. Other provisions deal with "group ownership," a device whereby several producers may pool their grain and obtain group certificates. Still other provisions have to do with the fraudulent issuance of certificates, issuing of duplicate certificates, delivery of grain while a certificate is outstanding, transfer or mortgaging of grain after issuance of securities, and application of the Warehouse Receipts Act.

The Illinois Warehouse Receipts Act is printed in full as Appendix III (Ill. Rev. Stats. 1945, Ch. 114, pars. 233-292). It is summarized in the margin.[9]

The Illinois Public Utilities Act under which the instant petitioners seek to conduct the investigation which the Circuit Court of Appeals says must be restrained, is too long to be reproduced in full. Pertinent provisions are summarized as follows:

Section 10 of the act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 10) defines as a public utility any person, including a corporation, which shall conduct a business "for the storage or warehousing of grain."

This statute gives the commission the broad regulatory powers that are usual in the case of modern administrative superintendence of state public utilities. Among the powers conferred upon the commission are those of fixing rates (sec. 41), regulating service and facilities (sec. 49), the supervising and approving of financing and issuance of securities (sec. 20), regulation of transactions with subsidiaries, affiliates and other public utilities (sec. 27), investigation (sec. 60), supervision of accounts (sec. 11), and, to speak more generally, jurisdiction over the conduct of the grain warehousing business (secs. 8-10).

No such comprehensive regulation of federally licensed

(9) This is a comprehensive warehouse receipts negotiable instrument act. After prescribing the contents of such certificates, it reenacts the provisions of the Grain Warehouse Act with respect to what certificates are non-negotiable and what certificates are negotiable (the distinction is as to whether the goods are deliverable "to the depositor or to the bearer or to the order of any person named in such receipt"). This act provides for duplicate receipts which are non-negotiable shall be so marked. It requires and authorizes the delivery of goods upon due presentation of the receipt, contains provisions imposing liability for conversion, authorizing the commingling of fungible goods and makes the ownership of such goods ratable tenants in common of the commingled mass, previous attachment or levy unless negotiable receipts are surrendered, gives a lien for storage charges, and contains provisions with respect to negotiation and transfer of receipts and the rights of mesne and ultimate holders thereof.

warehouses appears to have been envisioned by Congress in enacting the Federal Warehouse Act. In the first place, federal licensure is purely voluntary. Conceivably Congress might have intended that those who elected to comply with the federal act should thereby become immune from state regulation, thus leaving it optional with individual warehousemen to determine whether they wished to be under state or federal regulation, but such an intent would appear to be so inconsistent with any rationally conceived purpose comprehensively and fully to regulate the grain warehousing business that it should not be inferred in the absence of a clear expression, particularly when it would have been so very easy for Congress to have inserted such a provision in the Act if it had intended any such result.

As originally enacted, section 29 of the Federal Warehouse Act reads as follows:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *."

In 1931 section 29 was amended to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

The Circuit Court of Appeals divined from this change of language an implication of congressional intention to supersede all state regulatory authority. Indeed, the respondents' case was necessarily conceived upon imputing such an effect to this language, since under the original version of the Act it was expressly provided that it should not "conflict with * * * or limit the effect or operation of the laws of any state relating to warehouses."

But since petitioners contend that, as this court said in *United States* v. *Hastings*, 296 U. S. 188, 199:

> "* * * The amendment of 1931, with respect to conflict with the operation of state laws, does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act * * *,"

we continue our analysis of the federal act without argumentative comment at this point in order to ascertain to what this court must have referred when it spoke in the language above quoted of "the authority conferred by the Act."

Although the federal act does permit the Secretary of Agriculture to strike down discriminatory and unreasonable rates, it does not express any grant of authority to him to conduct hearings and fix such rates. Indeed, such authority might well be of little practical value; for he could not fix rates for non-licensed warehouses and therefore could not achieve any integrated or coherent rate pattern for the nation's warehouse utilities.

We do not depart from the task of comparative analysis of the act involved when we observe in passing that although the last fifteen years have seen an unprecedented trend toward federal price control and regulation of business, Congress has provided no machinery whereby the

Secretary of Agriculture may hold hearings such as those that have traditionally been held in the field of public utility rate making.

The Act provides for no judicial review of any rate structure that the Secretary of Agriculture might impose. Hence we conclude that it is not intended that he shall impose any such general structure. Although the trend of the times is toward more, not less, control over the financing and capitalization of business, this Act contains no provision authorizing the Secretary of Agriculture to superintend the issuance of securities or other financing operations. If federally licensed warehousemen escape state supervision of their financing, without submitting themselves to federal supervision, the result is in diametrical opposition to the entire tendency of recent congressional policy.

As pointed out in more detail in the brief of Rice & Company in support of its petition in the *Great Lakes* case, the Act confers no authority to issue general regulatory orders and directives, no requirements for the making of findings of fact by the Secretary, no legislative standards governing administrative policy, no general power to conduct hearings and no provision for rehearings or for judicial review.

A.

CANONS GENERALLY APPLICABLE TO THE QUESTION OF IMPLIED CONGRESSIONAL SUPERSEDURE OF STATE AUTHORITY.

This court said in *Railway Mail Association* v. *Corsi*, 326 U. S. 88, 97:

> "Congress must clearly manifest an intention to regulate for itself • • • before the police power of the state is powerless."

This general precept and doctrine is so well settled that we do not extensively quote authorities in support of it. They will be found at some length, however, in the brief of Rice & Company in the *Great Lakes* case. (See *Illinois Central Railroad Co.* v. *Commission*, 245 U. S. 493, and *Reid* v. *Colorado*, 187 U. S. 137, for recognition of this general principle.)

One serious fallacy that permeates the opinion of the Circuit Court of Appeals in the instant case is its view that federal authority to promulgate regulations which *may* conflict with existing or future state regulations constitutes *per se* such an exertion of congressional authority as to preempt the field in which such a potential conflict may arise.

But this court has held otherwise. In *Northwestern Bell Telephone Co.* v. *Nebraska*, 297 U. S. 471, the relevant act of Congress not only gave the Interstate Commerce Commission authority in its discretion to prescribe uniform system of accounts for telephone companies but *made it unlawful for them to keep any accounts other than those prescribed by the commission.* This court said at page 480:

> "No exertion of federal authority • • • forbids the making of entries in appellant's accounts or the doing of anything that is by the state commission's order directed to be done. Pending action by the Communications Commission establishing depreciation rates for telephone companies, state control over such rates remains unimpaired."

Another case which is cogently pertinent and which the Circuit Court of Appeals does not even cite, although petitioners relied upon it heavily in that court and as they do here, is *Terminal Railroad* v. *Brotherhood Trainmen*, 318 U. S. 1. In that case the Illinois Commerce Commission

had entered an order requiring the interstate railroad to put cabooses on interstate trains. Not only did the Interstate Commerce Commission clearly have authority to enter an order inconsistent with and superseding the Illinois order, but the court assumed without deciding "that the demand for additional caboose service and its refusal constitute dispute about working conditions and that the National Railroad Adjustment Board would have jurisdiction of it on petition of the employees or their representative." Here, then, were not one but two separate acts under either of which the federal government might have promulgated an administrative regulation in conflict with the Illinois regulation. Nevertheless the Illinois regulation was sustained.

We submit that once it is perceived that the opinion of the Circuit Court of Appeals rests upon the fallacious assumption that mere potential repugnance of administrative action is enough to evince a preemption of the field and a nullification of state acts, that opinion, notwithstanding the prestige of the experienced and distinguished court that pronounced it, should invite *certiorari* from and reversal by this court.

Another consideration that must seriously compromise the authority of the opinion now under review is the following: The scope of the investigatory and potentially regulative process of the Illinois commission in the instant case was broad and general. The Circuit Court of Appeals strips the Illinois commission of *all* regulatory authority over federally licensed warehousemen. Now it is a matter of state, not of federal, concern how Illinois bestows or distributes its police power if police power exists. How far is the Illinois commission, and therefore the State of Illinois, disabled from regulating licensed

granaries under the Circuit Court of Appeals decision? Is a federally licensed and approved warehouse subject to Illinois' fire laws? Is it subject to her zoning ordinances, or a power in the Illinois commission to consider zoning policy in approving its operation in a given manner at a given location? If securities that it desires to issue are not subject to the Commerce Commission, are they subject to the provisions of the Illinois Blue Sky Law? How far may Illinois regulate transactions between licensed and unlicensed warehousemen? (Such a question is fairly within the scope of the inquiry entertained by the commission upon the Rice petition.)

IV.

There Is No Repugnancy Between the Commodity Exchange Act and the Law of Illinois.

The federal statute seeks only to control excessive speculation upon and manipulation in commodity exchanges. (Section 3.) This control is exercised by prohibiting futures trading except where executed through registered futures commission merchants and brokers trading on boards of trade designated as contract markets by the Secretary of Agriculture. In addition, specific manipulative devices or practices which have led to excess speculation are prohibited. (Section 4-4d.) A board of trade may be designated as a contract market when there is a sufficient volume of trading in the actual commodity as well as in futures, when records are maintained, false reports and manipulation of prices are prevented, and membership is assured to co-operative associations. (Section 5.) The designated contract market is required under the statute to:

a) "Furnish" the secretary with copies of rules and regulations and changes therein. (Section 5a(1).)

b) Allow the inspection of its books by the secretary. (Section 5a(2).)

c) Require warehouses out of which deliveries can be made on futures contracts to make reports, keep records and allow "visitation" by the secretary. (Section 5a(3).)

d) Provide the delivery period, delivery notice and the grades of commodities that may be delivered on futures contracts. (Section 5a(4), (5) and (6).)

e) Require that federally licensed warehousemen be declared regular for deliveries on futures contracts "without discrimination", irrespective of the possession of state licenses, provided reasonable requirements as to accessibility and suitability are met. (Section 5a(7).)

The statute is not comprehensive in scope. It does not provide for affirmative regulation, but controls in a negative manner by prohibiting futures trading unless certain specific minimal requirements are met. The limited and circumscribed character of the Commodity Exchange Act and the underlying congressional intent were authoritatively discussed in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933). The claim was there made that a Missouri statute which declared illegal certain grain futures transactions had been superseded by the Grain Futures Act (Commodity Exchange Act before its amendment in 1936), on the ground of exclusive occupancy of the field by federal authority. In upholding state regulation, this court said at pages 198-200:

> "The Federal Act • • • does not purport to validate any dealings. Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded."

There was no general regulation or attempted regulation of futures trading, only specific subjects were covered. *State* v. *Christopher,* 318 Mo. 225, 2 S. W. (2d) 621, 628 (1928).

In fact, Congress has expressly negatived any broad supersedure of state regulation in the general field by manifesting its intent in Section 12 to preserve state control. It is there provided:

> "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *."

Congress thus recognized the existence of state authority in this field partially covered by federal enactment, and authorized the Secretary of Agriculture to draw assistance from and lend assistance to any state authority in furtherance of the congressional purpose. As this court recently said in *United Brokerage Co.* v. *Jensen,* 322 U. S. 202, 209 (1944):

> "Where the government has provided for collaboration the courts should not find conflict."

The Board of Trade has urged and the Court of Appeals has held as a basis upon which to invalidate state legislation that:

> "* * * Congress intended and expressly provided for exclusive federal control and authority over * * * the Board of Trade." (Rec. 259.)

This holding, we submit, is erroneous and directly in conflict with this court's decision in the *Dickson* case.

The invoked state authority validly controls a specific subject matter of regulation not occupied by or repugnant to federal statutes.

The state commission has been granted authority to pass upon in the public interest rules and regulations of the Board of Trade which relate to public or private warehousing of grain, and custodian receipts covering private warehousing. The Board of Trade has from time to time passed rules dealing with warehousing rates, services and financial transactions. (Rules 1620-36, *Board of Trade* case, Tr. 155-9). These are the rules over which state regulation is sought.

The federal act refers to warehouses in only two instances, and then only warehouses that have been approved or declared "regular" as facilities from which delivery may be made on futures contracts. A futures contract may be satisfied either by an offsetting trade in the futures market or by delivery of a warehouse receipt issued by a warehouse so approved.

The references to such warehouses in the federal act are:

Section 5a(3), which requires that boards of trade require regular warehouses to make reports, keep records and permit visitation by the secretary. This requirement obviously is intended to give the secretary general information only.

Section 5a(7), requires boards of trade to declare federal licensed warehouses regular for futures deliveries, irrespective of the possession of state licenses, "without discrimination". The purpose of this section was to prevent discriminations by boards of trade against warehouses possessing only federal licenses. It gave federal warehouses the same status as far as futures deliveries are concerned as state licensed warehouses, but both fed-

eral and state houses continued to be subject to all rules and regulations of the Board of Trade and to all applicable laws as long as such rules, regulations and laws are applied "without discrimination".

These two references to warehouses do not deal with the warehouse operating features of Board of Trade rules, over which state approval is required. In addition, the following types of warehouses or warehousing functions are not remotely referred to by the Commodity Exchange Act, since the warehouses or warehousing functions are not a part of the futures delivery mechanism—the only phase of warehousing upon which the federal act touches. The Board of Trade nevertheless has adopted rules relating to such warehousing functions, and certainly there can be no question that such rules must be submitted to the Illinois commission for approval:

1. Warehousing of public grain in houses that *have not been designated as regular* for delivery of grain in satisfaction of futures contracts.

2. Custody of grain in *private* warehouses, and control of custodian receipts.

3. Warehousing of actual grain which is not used in connection with futures trade or deliveries on futures contracts.

4. The rates and practices under which actual grain is stored and handled by warehousemen.

The Commodity Exchange Act does not require any rule or regulation of the Board of Trade to be submitted to the Secretary of Agriculture for his approval, and that is the specific state regulatory function here involved. The act contains only one prohibition with respect to the contents of a board of trade rule, and that is that no rule shall forbid the return of patronage dividends to cooperative members, nor shall the Board of Trade deny member-

ship to cooperative associations. (Sections 5c, 6a(2).) The subject of cooperatives has no relationship to our instant problem. No possible conflict could occur between this federal prohibition and the state requirement that rules relating to warehousing be approved.

Section 5a(1) of the federal act does require the Board of Trade to "furnish" the secretary with copies of all rules and regulations and changes therein. These rules are required to be furnished solely for informational purposes so that the secretary may keep advised of the type of regulations existing or being proposed. But this prohibition is vastly different from the requirement under the state act that certain rules and regulations must receive the commission's approval before they may become effective. The state commission is thus authorized to exercise regulatory power in the public interest.

This federal provision could in no way conflict with the state requirement. Assume that the Board of Trade adopted a rule and submitted it to the state commission, and that it was disapproved. There would be nothing to furnish the secretary. If the rule was approved, it would be furnished the secretary and complete compliance with both statutes would result. Nor could the state require the Board of Trade to adopt a rule which might infringe upon the Board of Trade's limited federal obligations, since the state commission cannot initiate a rule, but only passes upon rules first adopted by the Board of Trade and then submitted to the commission for approval.

The federal agency has not been granted power to approve or disapprove warehousing rules adopted by the Board of Trade. This regulatory function may be exercised solely by the state. To invalidate state authority would be to eliminate completely this form of regulation.

The court could not transfer or delegate the function to the secretary. Congress has not done so.

Counsel for the Board of Trade has not urged that the secretary has power to approve its warehousing rules. The Court of Appeals, however, has erroneously held (*Board of Trade* case, Tr. 261; *Great Lakes* case, Tr. 125):

> "We therefore are of the view that Congress has invaded the precise field occupied by the Illinois commission by reason of § 194b of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The Court of Appeals misconceived and misconstrued the provisions, scope and character of the Commodity Exchange Act, and the principles of supersedure that have been announced by this court in favor of the validity of state authority in the absence of irreconcilable conflict.

DIGEST OF IMPORTANT CASES SUSTAINING STATE REGULATIONS ALTHOUGH FEDERAL CONTROL EXISTED IN THE SAME FIELD.

Food and Agricultural Products.

Reid v. *Colorado*, 187 U. S. 137 (1902)

A federal act declaring it an offense for one knowingly to transport diseased livestock from one state to another did not invalidate a state requirement that livestock imported into the state be certified as free from contagious disease, regardless of shippers' knowledge.

Savage v. *Jones*, 225 U. S. 501 (1912)

The Federal Food and Drugs Acts, prohibiting the misbranding of food products, does not supersede a state law requiring that the entire contents of the product be disclosed.

Sligh v. *Kirkwood*, 237 U. S. 52 (1915)

A state statute making it unlawful to ship in interstate commerce citrus fruits which are immature or "otherwise unfit for consumption" does not contravene the Federal Food and Drugs Act dealing with fruit which is "filthy, decomposed or putrid."

Merchants Exchange of St. Louis v. *Missouri*, 248 U. S. 365 (1919)

Comprehensive Federal Grain Standards Act relating to standards of quality and condition of grain does not supersede state law prohibiting weighing of grain shipped into and outside of the state by other than state appointed weighers.

Corn Products Refining Co. v. *Eddy et al.*, 249 U. S. 427 (1919)

A state statute adopting almost the identical language of the Food and Drugs Act, but in addition permitting the state administrative body to require manufacturers of proprietary syrups to state on the label the percentage of each ingredient, is valid, notwithstanding the federal act prohibited misbranding and required the labeling of such substances as morphine, cocaine and opium.

Carey v. *South Dakota*, 250 U. S. 118 (1919)

Federal Migratory Bird Act, placing migratory ducks within the custody and protection of the United States Government and forbidding their being destroyed or taken out of season, does not conflict with a state law prohibiting the shipment of wild ducks either within or to points outside the state.

Mintz v. *Baldwin*, 289 U. S. 346 (1933)

A certificate that cattle shipped in interstate commerce are free from Bangs disease may lawfully be required by the state of importation from state of origin, notwithstanding federal law which provided that whenever an inspector of the Bureau of Animal Industry issues a certificate of inspection, cattle may be shipped in interstate commerce without further examination.

Dickson v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933)

State law declaring certain sales of grain for future delivery to be illegal is not superseded by the Grain Futures Act, which regulates and thus acquiesces in grain futures trading.

Hartford Indemnity Co. v. *Illinois*, 208 U. S. 155 (1936)

An Illinois statute paralleled a federal statute in licensing produce merchants. Additional state requirement of a bond was not superseded.

Pacific States Co. v. *White*, 296 U. S. 176 (1935)

Federal Standard Baskets and Containers Act, fixing the cubic contents of containers for fruits and vegetables, does not conflict with or supersede a state regulation determining the dimensions and form of a container for raspberries.

Townsend v. *Yeomans*, 301 U. S. 441 (1937)

A state statute, fixing maximum charges for handling and selling leaf tobacco by warehousemen, is not repugnant to the Tobacco Inspection Act containing comprehensive provisions over marketing and inspection of tobacco.

Parker v. *Brown*, 317 U. S. 341 (1943)

The Federal Agricultural Marketing Agreement Act permitting the Secretary of Agriculture to adopt a marketing program for raisins does not, in the absence of an order of the Secretary, forbid a similar program under state statute.

Railroads and Motor Carriers.

Atlantic Coast Line v. *Georgia*, 234 U. S. 280 (1914)

A state may require locomotive headlights of specific intensity as a safety measure, notwithstanding Congress had enacted legislation pertaining to many types of locomotive safety devices.

Missouri Pacific R. Co. v. *Norwood*, 283 U. S. 249 (1931)

The authority of the Interstate Commerce Commission over service and supply of trains does not conflict with the state's power to prescribe the number of members of a railroad train and switching crew.

Atchison Ry. v. *Railroad Comm.*, 283 U. S. 380 (1931)

Provisions in the Interstate Commerce Act for commission approval of construction of railroad terminal do not supersede state power to order and compel construction of such a terminal.

South Carolina State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177 (1938)

The Federal Motor Carrier Act does not forbid a state from regulating the weight and width of trucks using its roads in interstate commerce.

Welch Co. v. *New Hampshire,* 306 U. S. 79 (1939)

A state statute prohibiting a truck driver from being on duty in excess of twelve hours is not superseded by the Federal Motor Carriers Act of 1935, empowering the Interstate Commerce Commission to regulate the maximum number of work hours for such drivers.

Maurer v. *Hamilton,* 309 U. S. 598 (1940)

A state statute prohibiting the operation on a highway of a vehicle carrying another vehicle above the cab of the carrier does not conflict with the Federal Motor Carrier Act empowering the Interstate Commerce Commission to establish regulations as to safety of operations and equipment, and to investigate weights and sizes of vehicles, notwithstanding a finding by the commission that the type of operation prohibited by the state was not unsafe.

Terminal Assn. v. *Brotherhood of Railroad Trainmen,* 318 U. S. 1 (1943)

An Illinois Commerce Commission order requiring caboose cars for switchmen in intrastate movement of freight trains, but having the practical result of compelling such cars also in interstate commerce, is permissible and not superseded by Federal Railway Labor Act, Interstate Commerce Act, Safety Appliance Act or Boiler Inspection Act. (This case was considered, *ante.*)

Southern Pacific Co. v. *Arizona,* 325 U. S. 761 (1945)

A state statute limiting the length of interstate trains does not conflict with power in the Illinois Commerce Commission to regulate the same subject matter in an emergency.

Miscellaneous.

Minnesota ex rel Whipple v. *Martinson*, 256 U. S. 41 (1921)

A state law forbidding a physician to furnish drugs to habitual users out of stock on hand, and requiring the issuance of a prescription, was not in conflict with the Harrison Anti-Narcotics Act, which permitted physicians personally to dispense drugs to such persons at his pleasure, provided proper records were kept.

Kelly v. *Washington*, 302 U. S. 1 (1937)

Elaborate federal regulations for marine safety control, including the prescription of numerous safety devices and inspection of hulls of motor-driven vessels carrying passengers or freight for hire, or flammable or other like dangerous cargo, did not supersede state inspection of hulls of motor-driven tugs not in the categories specifically covered.

Allen-Bradley Local v. *Wisconsin Emp. R. Bd.*, 315 U. S. 740 (1942)

State labor law, declaring certain *employee* practices unfair labor practices, is not in conflict with the NLRB prescribing unfair *employer* labor practices.

Anderson National Bank v. *Luckett*, 321 U. S. 233 (1944)

National banks may be required under a state statute to turn over inactive accounts to the state, without infringing upon the provisions of the national banking laws pertaining to acceptance of deposits and doing a banking business.

Union Brokerage Co. v. *Jensen et al.*, 322 U. S. 202 (1944)

State requirement of license of foreign custom house brokers not in conflict with licensing provisions of the federal act dealing with custom house brokers.

Railway Mail Assn. v. *Corsi*, 326 U. S. 88 (1945)

An association of United States postal employees, subject to federal statutes regulating terms and conditions of employment and prohibiting discrimination because of membership in a union, is nevertheless subject to a state law prohibiting discrimination in union membership on account of race, creed or color.

CLOVERLEAF BUTTER CO. v. PATTERSON, 315 U. S. 148, distinguished.

The Circuit Court of Appeals confessedly grounded its opinion principally upon this court's decision in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, for it says (*Great Lakes* case, Tr. 112; *Board of Trade* case, Tr. 248):

> "The case on its facts and questions decided most similar to the instant one is that of *Cloverleaf Butter Co.* v. *Patternson, supra.* • • •"

We recognize that when a court of second highest authority in the land bases its decision chiefly upon a decision of this court that it deems controlling we must read that case with particularly respectful attention. We have done so.

The following considerations distinguish the *Cloverleaf* case from the instant cases in the following salient respects:

First: Although it is true that public health was involved, the *activity* subject to state and federal superintendence was the narrow one of the manufacture and production of a single food product, to-wit: renovated butter. While many steps enter into the preparation of the finished product, they comprised an integrated sequence of activities calculated to a single end, namely, the offering to the public of a single and highly specific food product.

We can incisively put the matter as follows: Here is a package of renovated butter. The federal government says that it may be sold. The state of Alabama says that it may not be sold. Both regulations cannot simultaneously be given effect.

But grain warehousing is a business of manifold aspects. The enterprise is a public utility. Its functions are myriad. Its operations are a matter of national destiny.

In the instant case the federal act is primarily designed to assure, by federal approval, the reliability of highly negotiable grain warehouse receipts. It is true that to that end it endows the Secretary of Agriculture with some measure of control over federally licensed warehouses.

But the act does not empower him to fix rates, approve financial transactions, regulate transactions with other utilities, or promulgate regulations prospective and therefore legislative in tenor, with respect to the vitally important warehouse business generally. The power of the states in such cases has been historic. It should not be nullified unless the conflict is inevitable, as was the conflict in the *Cloverleaf* case.

In the *Cloverleaf* case there was precise coincidence of subject matter—namely, the renovated butter viewed as a product fit or unfit, as the case might be, for human consumption. In the instant case there is no single, simple product which cannot be simultaneously fit and unfit but a vast industry which has always been subject, in related but very diverse phases, to the sort of authority that Illinois asserts and that is not subject to any comparable authority upon the part of the Secretary of Agriculture.

Second: With respect to the act involved in the *Cloverleaf* case, there was no history of prior explicit provision

that state authority should be unimpaired by the act. There is such a history in connection with the instant acts.

Although the Circuit Court of Appeals places reliance upon the provision inserted by the 1931 amendment of Section 29 of the Federal Warehouse Act, which provided that

> "* * * the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

this language, particularly when read in the historical context of the act, is at least as favorable to petitioners as it is to respondents.

The Federal Warehouse Act expressly provides that the Secretary of Agriculture "is authorized to co-operate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers * * *."

Now how can the Secretary of Agriculture "co-operate with State officials charged with the enforcement of State laws relating to warehousemen" if such State laws are superseded? No such consideration was present in the *Cloverleaf* case.

This language falls far short of peremptory interdiction of all state authority over grain warehouses. The Circuit Court of Appeals has held that the Illinois Commerce Commission cannot regulate or even investigate any phase of the vast grain warehouse business. We submit that this ruling should elicit *certiorari* and result in reversal.

Conclusion.

Wherefore, it is respectfully submitted that the public interest will be promoted by the granting of this petition and the decision by this court of the question involved.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

APPENDIX I.

ARTICLE XIII.

WAREHOUSES.

§ 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

§ 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

§ 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

§ 4. All railroad companies and other common carriers on railroads shall weight or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

§ 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

§ 6. It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

§ 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

APPENDIX II.

Illinois Grain Warehouse Act.

(Illinois Revised Statutes, 1945, Ch. 114, pars. 293-326a, pp. 2714-2718.)

STORAGE OF GRAIN.

AN ACT to provide for the storage of cereal grains, soybeans and cowpeas in State-licensed warehouses and under State supervision, and the issuance of storage certificates therefor, and providing penalties for offenses thereunder. [Approved June 30, 1927. L. 1927, p. 704, title as amended by act approved July 2, 1935. L. 1935, p. 1115.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

293. Definitions.] § 1. That wherever the word "board" shall appear in this act it shall refer to any local supervisory board of individual producers appointed by the Department of Agriculture under the provisions of this act.

The word "sealer" shall refer to any person whose duty it shall be under the provisions of this act to seal any granary, crib, bin, or other receptable for grain.

The word "certificate" shall refer to any certificate or receipt evidencing the storage of grain under the provisions of this act and any rules or regulations promulgated thereunder.

The word "owner" shall refer to and include any person or persons, (whether individuals, copartnerships or corporations) who shall either personally or as trustee have title to or the right of possession of any grain stored under the provisions of this act.

The words "grain in storage" shall refer to cereal grains, soybeans and cowpeas stored under the provisions of this act. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

294. Local supervisory boards.] § 2. Local supervisory boards consisting of not less than three (3) nor more than seven (7) members shall be appointed by the Department of Agriculture in any county or counties upon the applica-

tion of one or more citizens as hereinafter provided for the purpose of supervising grain in storage and the issuing of certificates against such grain, and generally and under the direction of the Department of Agriculture for carrying out the purposes and enforcing the provisions of this Act. A suitable name and a number shall be given to such board by the Department of Agriculture. The members of such board shall at the time of their appointment be producers of grain in the county or counties for which they are appointed and residents thereof. They shall continue in office until their successors are appointed by the Department of Agriculture. In the event of vacancies arising by reason of the resignation or upon removal from the county or counties or death of any member or members such vacancies shall be filled in manner and form as in the case of original appointments. Each board shall appoint one of its own members as its secretary. The secretary may also be the treasurer and each board shall also appoint a president and vice president from its own membership, and their duties shall be those of similar officers in their organization. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

295. Oath—Treasurer's bond.] § 3. Members of such boards shall qualify by taking oath similar to that required of public officials. The treasurer shall furnish bond conditioned for the faithful performance of his duties as treasurer, for the faithful accounting for moneys coming into his hands and for the delivery of any unexpended portions thereof to his successor in office or to such other person or persons or to such societies as may be provided by law. Such bond shall be in such amount not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00) as may be determined by the Department of Agriculture. Such bond shall be deposited with and the sureties thereon shall be approved by such Department. In case such bond is not a personal bond the premium therefor shall be paid out of the funds of the board. [As amended by act approved June 9, 1943. L. 1943, vol. 1, p. 1052.]

296. Issuance of license.] § 4. Upon the appointment and qualification of the members of such board the Department of Agriculture shall immediately issue a license to it, and prescribe the duties of its officers and the records they shall keep. Each license shall be numbered, and specify

the territory which shall be under the jurisdiction of the board and within which certificates may be issued, such certificates shall bear the names and the license number of the board. It shall also have printed thereon such other directions, rules and regulations as the Department of Agriculture shall make or promulgate and deem necessary to set forth upon such license.

297. Appointment of board.] § 5. Any person may make application to the Department of Agriculture for the appointment of a board in and for the territory in which he resides; or the Department of Agriculture may make such appointments upon its own initiative. When any such application is made the Department of Agriculture shall as soon as practicable investigate the situation and determine upon the advisability or otherwise of making the appointments requested. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

298. Local sealer.] § 6. The board shall submit to the Department of Agriculture the name of some person or persons who shall, subject to the approval of the Department of Agriculure, act as the local sealer or sealers, and every such sealer shall have the same authority with respect to the provisions of this act and the rules and regulations promulgated thereunder, and the enforcement thereof, as any officer of the peace.

299. Application for storage—Appeal from decisions of board.] § 7. The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board.

Any owner aggrieved by any ruling or decision of the board may appeal to the Department of Agriculture whose decision, subject to the judicial review thereof hereinafter provided, shall be final. As amended by act approved June 30, 1945. L. 1945, p. —, S. B. No. 139, effective Jan. 1, 1946.

Text of section until Jan. 1, 1946.

299. Application for storage—appeal from decisions of board. § 7. The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board.

Any owner aggrieved by any ruling or decision of the board may appeal to the Department of Agriculture whose decision shall be final.

300. Power and duty of sealer.] § 8. It shall be the duty of the sealer under the direction of the Department of Agriculture, to:

a. Supervise the storage of grain.

b. Ascertain the amount stored by each owner who shall desire to avail himself of the provision of this Act.

c. Determine, so far as possible, upon the basis prescribed in the rules and regulations issued hereunder, the exact grade and quality thereof.

d. Ascertain, prior to the issuance of any certificate, that the bin, crib, granary or other receptacle in which the grain is stored is satisfactory for the storage of such grain, and that such receptacle conforms to the regulations applicable thereto promulgated by the Department of Agriculture.

He shall, before delivering a certificate to the owner, ascertain that there are no other outstanding certificates upon the grain and shall securely seal the granary, crib, bin or other receptacle in which the grain so certified is stored. Thereafter the sealer may make such inspections of the granaries, cribs, bins or other receptacles so sealed, at such times and in such manner as the Department of Agriculture may determine rendering to the Department, and to the owner when requested, such reports as to the amount and condition of the grain in storage and the condition of the receptacle in which it is stored, as may be required. The sealer shall have authority at all times to enter upon any premises for the purpose of inspecting grain in storage or the granary, crib, bin or other receptacle in which it shall have been stored, and the acceptance of a certificate by the owner shall be deemed consent to entry and inspection by the sealer or any person duly authorized thereunto by the Department of Agriculture.

Seals or locks, or other fastenings employed shall be in accordance with specifications furnished by the Department of Agriculture. A warning card shall be posted in a conspicuous place near the seal on each receptacle sealed. Such card shall contain substantially the following wording:

"WARNING

Sealed by authority of the Department of Agriculture of the State of Illinois.

Any person tampering with this seal or removing any grain therefrom shall be subject to fine and imprisonment as provided by law.

Signed....., Director of Agriculture, State of Illinois." [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

301. Bond and oath of sealer.] § 9. The sealer shall furnish bond for the faithful performance of his duties in such amount not less than one thousand dollars ($1,000) as shall be determined by the Department of Agriculture. Such bonds and the sureties thereon, shall in every case be subject to the Department's approval and be deposited with it, and in case it is not a personal bond the premium thereon shall be payable out of any funds in the hands of the board.

He shall also qualify by taking an oath similar to that required of public officials. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

302. Form of certificates.] § 10. Certificates shall be upon forms to be prepared by the Department of Agriculture, and every such certificate must embody within its written or printed terms:

(a) The name and license number of the board under which such certificate is issued.

(b) The consecutive number of the certificate.

(c) The date of issue of the certificate.

(d) A particular description of the granary, bin, crib, or other receptacle in which the grain is stored, and of the premises upon which it is located.

(e) A description of the grain.

(f) The name of the owner or owners, whether ownership is sole, joint, or in trust, and the conditions of such ownership, and (in the case of tenants) the date of termination of the lease.

(g) A statement of any loans or other indebtedness made to or owing by the owner which in any manner constitutes a lien, whether statutory or contractual, including both mortgage and landlord's liens, upon the grain, which statement shall be signed by the owner or his agent.

(h) A form of waiver of liens which may be signed by the lienholder.

(i) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order, and at what place it will be delivered.

(j) A facsimile signature of the Director of Agriculture and the countersignature of the sealer.

(k) If the owner is married, a waiver by the spouse of any claim of exemption and a consent to the instrument.

(l) A statement that no other certificate is outstanding covering the grain represented thereby. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

303. Owner not to be relieved from duty of reasonable care.] § **11.** No term or condition shall be inserted in any certificate, whether negotiable or otherwise which shall in any manner purport to relieve the owner from exercising that degree of care in the safe keeping of the grain in storage which a reasonably prudent man would exercise with regard to similar property of his own.

304. Non-negotiable certificate.] § 12. A certificate in which it is stated that the grain stored shall be released or delivered to the owner, or to any other specified person, is a non-negotiable certificate.

305. Negotiable certificate.] § 13. A certificate in which it is stated that the grain stored will be delivered to the bearer, or to the order of any person named in such certificate, is a negotiable certificate.

No provision shall be inserted in a negotiable certificate that is non-negotiable. Such provisions, if inserted, shall be void. Provided, however that in case the owner is a tenant, the certificate shall cease to be negotiable from and after the date of the termination of the lease as it appears thereon.

306. Issuance of certificate.] § 14. The sealer shall issue to the owner one or more certificates as herein provided, but the aggregate amount of the grain represented by such certificate or certificates shall in no event exceed the amount of grain stored and sealed by the sealer, and each such certificate shall cover a separate granary, crib, bin or receptacle. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

307. Duplicate of certificates to be filed.] § 15. All certificates issued hereunder shall be issued in triplicate or in case the Department of Agriculture shall so direct, in

quadruplicate. All such copies except the original shall be marked "Duplicate—No Value". The sealer shall file with the Secretary of the board one duplicate of all certificates delivered by him, and the secretary shall keep an accurate record thereof in a book provided by the Department of Agriculture for the purpose. In case the Department shall so direct, the sealer shall also file one duplicate of all certificates delivered by him with the Department for the Department's records. The original and one duplicate copy shall be delivered to the owner. The owner may file this duplicate copy in the office of the Recorder of Deeds or he may retain the same and when he negotiates the original certificate, may at the same time deliver to the assignee the duplicate copy. In case the owner has filed the duplicate with the Recorder, he shall deliver the Recorder's receipt for the duplicate to the assignee at the time he negotiates the original certificate. In case the duplicate copy is delivered to the assignee, the assignee may file such duplicate copy in the office of the Recorder of Deeds for the county in which the grain is located and such duplicate shall remain in the custody of the Recorder except as hereinafter provided.

When a duplicate is presented to the Recorder carrying the endorsement "This instrument to be filed but not recorded," the Recorder shall file the same in his office and shall index the same in the chattel mortgage index or other suitable index and shall show the date of the certificate, the number thereof, to whom it was issued and the kind, quantity and location of the grain covered thereby. He shall collect a fee of twenty-five cents (25¢) for filing and indexing each such duplicate certificate. The filing and indexing of such certificate shall impart the same notice as the filing and indexing of a chattel mortgage.

When the owner or holder of a certificate makes written assignment thereof, the Recorder shall on request of the assignee enter a copy of such assignment upon the duplicate certificate filed in his office and shall enter upon the index book the date of the assignment and the names of the assignor and assignee. The Recorder shall collect a fee of twenty-five cents (25¢) for each assignment entered. [As amended by act approved July 2, 1935: L. 1935, p. 1115.].

308. § 16. Repealed L. 1931—32, First Sp. Sess., p. 64.

308a. Cancellation of certificate.] § 16a. The owner may secure the cancellation of a certificate by delivering the original thereof to the board by which it was issued with the request that it be cancelled. The board shall stamp the word "Cancelled" together with the date of such cancellation upon such original certificate and also upon the duplicate thereof in its files. The board shall retain the original certificate so cancelled. Upon notice in writing from the board issuing the original certificate to the effect that it has been cancelled, the Recorder of Deeds shall release the duplicate thereof filed of record in his office without charge. In case a copy of such certificate has been filed with the Department of Agriculture, the board shall also notify such Department of the cancellation of such certificate. [Added by act approved July 2, 1935. L. 1935, p. 1115.]

309. Board may act as trustee of certificates.] § 17. Whenever it shall appear that the interests of holders of certificates and other parties interested may be further conserved thereby the Department of Agriculture may authorize the board to act as trustee for such certificates as may be assigned to it in that capacity and the board may then exercise all the rights of an owner, subject to the duties and responsibilities imposed and devolving upon trustees under similar conditions. All certificates issued by the board as trustee shall have that fact plainly set forth thereon, any other provision of this act to the contrary, notwithstanding, but such statement shall in no manner affect the negotiability or non-negotiability of such certificate.

310. Non-negotiable certificate labelled as such.] § 18. A non-negotiable certificate shall have plainly printed or written upon is face, "Non-negotiable" or "Not Negotiable."

311. Delivery of grain.] § 19. The owner shall, in the absence of some lawful excuse provided by this act, deliver the grain stored upon demand made by the holder of a certificate for the grain, or for such part thereof as is represented by the certificate if such demand is accompanied by:

(a) A showing that all such liens as may appear upon the certificate and which shall subsist upon the date of the demand have been satisfied

(b) An offer to surrender the certificate if negotiable, with such endorsements as would be necessary for the negotiation of certificate, and,

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the owner.

In case the owner refuses or fails to deliver the goods in compliance with a demand by the holder of a certificate so accompanied, the burden shall be upon the owner to establish the existence of a lawful excuse for such refusal.

312. Pooling of grain in storage by owners.] § 20. Owners may, for the purpose of pooling their grain and affording a higher degree of security, organize themselves into groups of two or more owners of grain in storage, all of whom shall be jointly and severally liable to holders of certificates in due course to the extent of seventy-five per cent of the market price of the grain represented by certificates issued against it, and at the time of their sale, pledge, assignment or other lawful disposition, and all the grain in storage and belonging to said pool shall be liable for the payment of moneys advanced against, or paid for such certificates.

313. Group certificates.] § 21. Certificates issued to or on behalf of the members of such groups shall have printed thereon the words "Group Certificates". They shall embody the same terms as are required in the case of other certificates issued under the provisions of this act insofar as they are applicable, and in addition thereto, shall have stated thereon the total amount of grain belonging to the pool and the names of the members constituting the group.

All group certificates shall be negotiable, and any provision thereon contrary thereto or inconsistent therewith or in any manner purporting to relieve the members of the group of their liability or any part thereof, as provided in the immediately preceding section, shall be void. [As added by act approved July 2, 1935. L. 1935, p. 1115.]

314. Application to organize group.] § 22. When any owners desire to organize themselves into a group for the purposes described in the two immediately preceding sections, they shall notify the secretary of the board upon forms provided for that purpose. The secretary shall transmit a duplicate of such application to the Department

of Agriculture. Unless, for good cause shown, the Department of Agriculture shall expressly disapprove of the organization of such group or groups and the functioning thereof, certificates may be issued to or on behalf of said group or groups as provided herein. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

315. Sealing, etc., applies to group certificates.] § 23. "Group Certificates" shall be issued by the local sealers as in case of individual certificates and all provisions of this act with respect to inspection, sealing and supervision of grain storage shall apply to the members of groups and the certificates issued for them. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

316. Department of Agriculture to supervise administration of act.] § 24. Te Department of Agriculture shall have general supervision of the administration of the provisions of this act and shall make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable effectually to carry out the purposes here of. It shall make such reasonable regulations with respect to the construction and maintenance of granaries, cribs, bins or other receptacles as may be necessary to protect the grain to be stored therein under the provisions of this act. It shall prepare and have printed under the same conditions as other state printing the necessary blanks, forms and other printed matter and shall make such charges to persons desiring such printed matter as shall meet the cost of production thereof. Such department may prescribe the forms of account to be kept by the several local supervisory boards and may, from time to time, require an audit of such account. The cost of any such audit shall be paid from the funds of the board whose accounts are audited. One copy of the report of such audit shall be filed with the Secretary of the board involved and one copy shall be filed with the Department. Each of such copies shall be open to public inspection during office hours. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

317. Complaints to be made to department—Hearing.] § 25. If any person shall feel aggrieved by any action of the board or of the sealer or any other official, he may submit his complaint in writing to the Department of Agriculture and the Director of Agriculture shall, as soon there-

after as possible, set the matter down for hearing before himself or one of the officers or employees of the Department at such place as shall be desirable and proper, having regard to the character of the controversy and the locality of the grain and residence of the parties involved. Likewise, the board may present to the Department of Agriculture any proper complaint against any owner and the procedure shall be as nearly as practicable the same as that in the case of charges filed by owners.

318. Orders of department—may suspend board's license.] § 26. The Department of Agriculture shall upon final hearing, make and enter such orders as it shall deem proper for the correction of improper practices, and may suspend the licenses of the board offending until such orders are obeyed. But such suspension shall in no manner relieve the board or the owners of any liability previously incurred under the provisions of this act. The costs and expense of such hearing shall be defrayed by the parties thereto, and shall be apportioned by the Department of Agriculture in such manner as it shall deem just and equitable.

319. Expenses of supervision—Fee paid by owner.] § 27. For the purpose of defraying the expenses of supervision, the owner shall pay to the board at the time of sealing, an amount which shall not exceed one cent per bushel of grain inspected and sealed by the sealer. Out of the fund thus created the compensation of the sealer, as fixed by the board, subject to the approval of the Department of Agriculture, and all other expenses, shall be paid. No compensation shall be paid to members of the board except by the express authorization and approval of the Department of Agriculture, and then only in case such payments may be made without overdrawing upon or unduly depleting the funds in the hands of the board. In the exercise of his powers and functions as an officer of the peace in connection with the provisions of this act, the sealer shall be entitled to the same fees as are provided by law for the performance of similar duties.

The board, subject to the approval of the Department of Agriculture, may direct the treasurer to pay any or all surplus moneys in his hands to any one or more agricultural societies designated by the board. As amended by act approved June 9, 1943. L. 1943, vol. 1, p. 1052.

320. Fee payable to Department of Agriculture.] § 28. The Department of Agriculture shall receive the following fees for services rendered under the provisions of this act:

For issuing licenses in each case, three dollars ($3.00).

For approving applications for group organizations, one dollar ($1.00).

All moneys received by the Department of Agriculture from fees and other sources in connection with the administration of the provisions of this act shall be paid into the State treasury.

321. Interfering with grain stored.] § 29. Any person unlawfully removing, breaking or in any manner interfering or tampering with any seal, lock or other fastening placed upon any granary, crib, bin or other receptable for grain under the provisions of this act, except when such removal shall be rendered imperative to prevent the damage, loss or destruction of grain stored therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

322. Fraudulent issuance of certificate.] § 30. An owner, the agent or servant of an owner, or any member of any board, or any sealer, who fraudulently issues or aids in fraudulently issuing a certificate for grain, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars, or both.

323. Issuance of duplicate certificate.] § 31. An owner, or any officer, agent or servant of any owner, who issues or aids in issuing a duplicate or additional negotiable certificate for grain, knowing that a former negotiable certificate for the same grain, or any part of it, is outstanding and uncanceled, wihout plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed certificate after proceedings as provided for in section 14[1] of "An Act in regard to warehouse receipts" approved May 29, 1907, shall upon conviction be punished for each

[1]Chapter 110, §§ 264-279.

offense by imprisonment in the penitentiary not exceeding two years, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

324. Delivery of grain with certificate outstanding.] § 32. An owner, or any officer, agent or servant of an owner, who delivers grain out of the possession of such owner, knowing that a negotiable certificate, the negotiating of which would transfer the right to the possession of such grain, is outstanding and uncancelled, without obtaining the possession of such certificate at or before the time of such delivery, shall, except when ordered by the court, as hereinbefore provided, be found guilty of a misdemeanor, and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine.

325. Transfer or mortgage of grain after issuing certificate.] § 33. Any owner who shall, after the issuance of a certificate for grain in storage, take, sell, mortgage, pledge, hypothecate or otherwise incumber, or attempt to take, sell, mortgage, pledge or otherwise incumber the said grain, or who shall take or remove it from the receptacle where standing, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

326. Application of Warehouse Receipts Act.] § 34. All the provisions of Section 9 to 48, inclusive, of "An Act in regard to warehouse receipts," approved May 29, 1907, relative to the negotiation, transfer, sale or endorsement of warehouse receipts shall so far as possible, apply to the negotiation, transfer, sale or endorsement of the certificates provided for herein.

Where the word "owner" is used in this act it shall be construed to be used in the same connection as the word "warehouseman" as used in the uniform warehouse receipts act, and where the word "certificate" is used in this act, it shall be construed to be used in the same connection as the word "receipt" is used in "An Act in regard to

warehouse receipts," approved May 29, 1907. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

326a. Judicial review of administrative decisions.] § 35. The provisions of the "Administrative Review Act", enacted by the 64th General Assembly,[1] and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department of Agriculture hereunder. The term "administrative decision is defined as in Section 1 of said "Administrative Review Act".[2]

Added by act approved June 30, 1945. L. 1945, p. —, S. B. No. 139, effective Jan. 1, 1946.

---

[2]Chapter 110, § 264.

APPENDIX III.

Illinois Warehouse Receipts Act.

AN ACT in regard to warehouse receipts, approved May 29, 1907, in force July 1, 1907.

ARTICLE I.

THE ISSUE OF WAREHOUSE RECEIPTS.

233. ISSUED BY WAREHOUSEMEN.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Warehouse receipts may be issued by any warehouseman.

234. REQUIREMENTS OF.] § 2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored.

(b) The date of issue of the receipt.

(c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been

made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of the terms herein required.

235. TERMS AND CONDITIONS.] § 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions: *Provided*, that such terms and conditions shall not

(a) Be contrary to the provisions of this Act.

(b) In any wise impair his obligation to exercise that degree of care in the safe keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

236. NON-NEGOTIABLE—WHEN.] § 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

237. NEGOTIABLE—WHEN.] § 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

238. DUPLICATE RECEIPTS.] § 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be the original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

239. NON-NEGOTIABLE RECEIPT TO BE SO MARKED.] § 7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "Not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

ARTICLE II.

OBLIGATIONS AND RIGHTS OF WAREHOUSEMAN UPON THEIR RECEIPTS.

240. OBLIGATIONS ON DEMAND.] § 8. A warehouseman in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt properly endorsed.

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

241. JUSTIFIED IN DELIVERING GOODS—WHEN.] § 9. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

242. WHEN LIABLE FOR CONVERSION, ETC.] § 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouse-

man shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

243. FAILURE TO TAKE UP RECEIPT ON DELIVERY.] § 11. Except as provided in section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

244. DUTY ON DELIVERY OF PART.] § 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

245. ALTERATION OF A RECEIPT.] § 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraud-

ulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

246. RECEIPT LOST OR DESTROYED—PROCEEDINGS.] § 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

247. "DUPLICATE" RECEIPT—EFFECT OF.] § 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability.

248. WHEN WAREHOUSEMAN EXCUSED FROM LIABILITY.] § 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the

warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

249. WHEN SEVERAL CLAIM TITLE.] § 17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

250. WHEN CLAIMS ARE ADVERSE.] § 18. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

251. TITLE OF THIRD PERSON AS DEFENSE.] § 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

252. LIABILITY ON ACCOUNT OF NON-EXISTENCE OF GOODS, ETC.] § 20. A warehouseman shall be liable to the holder of a receipt for damages caused by non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statement, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

253. LIABILITY FOR ANY LOSS OR INJURY.] § 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to

them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

254. SHALL KEEP GOODS SEPARATE.] § 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

255. AUTHORITY TO MINGLE FUNGIBLE GOODS.] § 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

256. LIABLE FOR DELIVERY OF SEVERAL SHARES.] § 24. The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had be [been] kept separate.

257. CANNOT BE ATTACHED, UNLESS RECEIPT IS SURRENDERED TO WAREHOUSEMAN.] § 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

258. ATTACHMENT OF RECEIPT.] § 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law

or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

259. LIEN OF WAREHOUSEMAN—FOR CHARGES, ETC.] § 27. Subject to the provisions of section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

260. HOW LIEN ENFORCED.] § 28. Subject to the provisions of section 30, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

261. HOW LIEN LOST.] § 29. A warehouseman loses his lien upon the goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

262. NEGOTIABLE RECEIPT—CHARGES—LIEN.] § 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

263. MAY REFUSE TO DELIVER, UNTIL LIEN IS SATISFIED.] § 31. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

264. WAREHOUSEMAN HAS OTHER REMEDIES.] § 32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

265. HOW LIEN SATISFIED.] § 33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place. In accordance with the terms of a notice so given a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the warehouse where the lien was acquired, or at the election of said warehouseman at any public auction room or place in the county where such warehouseman is located.

After the time for the payment of the claims specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sales the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

266. PERISHABLE GOODS.] § 34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse; and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reason-

able effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

267. REMEDY DOES NOT PRECLUDE OTHERS.] § 35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

268. LIABILITY ENDS WHEN GOODS SOLD TO SATISFY LIEN.] § 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods or to a holder of the receipt, given for the goods when they were deposited, even if such receipt is negotiable.

ARTICLE III.

NEGOTIATION AND TRANSFER OF RECEIPTS.

269. NEGOTIATED BY DELIVERY.] § 37. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or subsequent indorsee of the receipt has endorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are delivered to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

270. BY ENDORSEMENT.] § 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a

specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

271. NON-NEGOTIABLE RECEIPT—TRANSFER.] § 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the endorsement of such a receipt, gives the transferee no additional right.

272. NEGOTIABLE RECEIPT—WHO MAY NEGOTIATE.] § 40. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

273. RIGHTS ACQUIRED WHEN RECEIPT NEGOTIATED.] § 41. A person to whom a negotiable receipt has been duly negotiated requires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

274. WHERE TRANSFERRED ONLY, WHAT RIGHTS ACQUIRED.] § 42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the receipt is non-negotiable such person also acquires the right to notify the warehouseman in writing of the transfer to him of such receipt, and there-

by to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the written notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by notification in writing to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

275. TRANSFEREE MAY COMPEL INDORSEMENT—EFFECT.] § 43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires the right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

276. WARRANTIES OF NEGOTIATOR.] § 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine.

(b) That he has a legal right to negotiate or transfer it.

(c) That he had knowledge of no fact which would impair the validity of worth of the receipt, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

277. INDORSER IS NOT LIABLE FOR PRIOR OBLIGATIONS.] § 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

278. PLEDGEE NOT WARRANTOR.] § 46. A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft

drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

279. WHEN VALIDITY IS NOT IMPAIRED BY UNAUTHORIZED NEGOTIATION.] § 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

280. POSSESSION OF RECEIPT VALIDATES A SUBSEQUENT TRANSFER.] § 48. Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

281. STOPPAGE IN TRANSITU—RIGHT OF.] § 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

ARTICLE IV.

CRIMINAL OFFENSES.

282. GOODS NOT ACTUALLY RECEIVED—RECEIPT FOR.] § 50. A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

283. FALSE STATEMENT IN RECEIPT.] § 51. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

284. DUPLICATE RECEIPT NOT SO MARKED.] § 52. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

285. GOODS HELD JOINTLY, ETC.—ISSUING RECEIPT WITHOUT STATING SUCH OWNERSHIP.] § 53. Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants, who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon con-

viction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars; or by both.

286. DELIVERING GOODS WITH A NEGOTIABLE RECEIPT OUTSTANDING.] § 54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

287. TAKING NEGOTIABLE RECEIPT WITHOUT HAVING TITLE TO GOODS.] § 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

ARTICLE V.

INTERPRETATION.

288. RULES.] § 56. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

289. CONSTRUCTION OF ACT.] § 57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

290. DEFINITIONS.] § 58. (1) In this act, unless the context or subject matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature, or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

291. WHEN ACT DOES NOT APPLY.] § 59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

292. REPEAL.] § 60. All acts or parts of acts inconsistent with this act are hereby repealed: *Provided, however*, that nothing in this act shall be construed to repeal any of the provisions of an act entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain and to give effect to article thirteen of the Constitution of this state" (approved April 25, 1871, in force July 1, 1871),[1] except in so far as said last named act re-

[1] Sec. 189 *et seq.* of this chapter.

lates to warehouse receipts for property stored in public warehouses of Class C, or to repeal the provisions of an act entitled, "An Act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B in the State of Illinois, and providing penalties for violation thereof" (approved May 11, 1901, in force July 1, 1901).[2]

[2] Sec. 215 *et seq.* of this chapter.

APPENDIX IV.

Commodity Exchange Act.

Sections dealing with boards of trade.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose: *Provided*, That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Secretary of Agriculture.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the

parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period of the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 5a. Each contract market shall—

(1) promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) allow inspection at all times by any authorized representative of the United States Department of Agriculture or United States Department of Justice of the books, records, and all minutes and journals of proceedings of such contract market, its governing board and all committees, and of all subsidiaries and affiliates of such contract market, which books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct;

(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the United States Department of Agriculture or United States Department of Justice;

(4) when so directed by order of the Secretary of Agriculture, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, he shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as he finds will prevent or tend to prevent such "squeezes" and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract

to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, he shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as he finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated; and

(7) require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes.

SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary

of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the

evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further,* That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

* * *

SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership

and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the circuit court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a "contract market" may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more

than $10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such order continues shall be deemed a separate offense.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

* * *

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 6 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

IRVIS ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

January 6, 1947.

LINCOLN PRINTING COMPANY, CHICAGO — WABASH 6004

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statement of the case	2
Specification of errors to be urged	6
Summary of argument	8
Argument	12
I. Federal nullification of state authority results only where a precise coincidence of regulation or an irreconcilable conflict is clearly demonstrated	12
A. Public grain warehouses are matters of local and domestic concern, traditionally subject to regulation by the states	12
B. Congressional intent to invalidate state legislation is never presumed. It must be clearly manifested	13
C. Principles of supersedure	15
D. The decision of the Circuit Court of Appeals	21
II. United States Warehouse Act	27
A. The federal act is limited and circumscribed in its provisions, scope and purpose	27
B. The acquisition of a license under the federal act is wholly permissive and voluntary	30
C. The secretary does not possess any affirmative regulatory powers	32
D. Congress has provided only a "measure of control" by the United States Warehouse Act and has expressly sanctioned co-existing state authority	35
E. Effect of the 1931 Amendment	38
F. Federal Trade Commission 1937 report and recommendations to Congress	48
G. Conclusions on the United States Warehouse Act	49
III. The major state regulatory issues invoked	51
A. Enforce state provisions requiring prior commission approval of: (1) Contracts and arrangements with affiliates and other utilities; (2) sales, leases and encumbrances of utility properties or assets; (3) security issues	52

Page

B. Fix and determine just and reasonable rates 53

C. Enforce the state constitutional provision against occupying the dual and conflicting positions of public grain warehouseman and, at the same time, grain dealer 60

D. Eliminate discriminatory rates and practices 62

E. Establish safe, proper, adequate and efficient grain warehousing service and facilities 65

F. Prevent unwarranted abandonment of public grain warehouse service and capacity 68

Conclusion 69

Appendix A 71

Appendix B 81

LIST OF CASES CITED

Allen-Bradley Local v. Wisc. Emp. R. Bd., 315 U.S. 740 (1942) 26

Anniston Mfg. Co. v. Davis, 301 U.S. 337 (1937) 34

Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U.S. 380 (1931) 65-7

Cleveland v. Hope Natural Gas Co., 44 P.U.R. (n.s.) 1 (F.P.C. 1942) 58

Cloverleaf Butter Co. v. Patterson, 315 U.S. 148 (1942) 24-5, 45-6

Davies Whse. Co. v. Bowles, 321 U.S. 144 (1944) 12

Dickson v. Uhlmann Grain Co., 288 U.S. 188 (1933) 61

Farmers Cooperative Ass'n (In re), 8 N. W. (2d) 557 (1943) 46-7

Federal Compress & Whse. Co. v. McLean, 291 U.S. 17 (1934) 35

Hannah v. People, 198 Ill. 77, 64 N.E. 776 (1902) 60

Hill v. Florida, 325 U.S. 538 (1945) 19

Hines v. Davidowitz, 312 U.S. 52 (1941) 26

Illinois Cent. R. R. Co. v. Pub. Utilities Comm. of Illinois, 245 U.S. 493 (1918) 14

Independent Gin & Whse. Co. v. Dunwoody, 40 F. (2d) 1 (C.C.A. 5th, 1930) 43

Page

Interstate Commerce Comm. v. Cincinnati etc. R. Co., 167 U.S. 479 (1897) 54, 58

Kelly v. Washington, 302 U.S. 1 (1937) 16

Minnesota ex rel Whipple v. Martinson, 256 U.S. 41 (1921) 61

Munn v. Illinois, 94 U.S. 113 (1876) 12

Myers v. Bethlehem Corp., 303 U.S. 41 (1938) 34

N.L.R.B. v. Jones & Laughlin, 301 U.S. 1 (1937) 34

Panama Refining Co. v. Ryan, 293 U.S. 388 (1935) 34

Penn Dairies v. Milk Control Commission, 318 U.S. 261 (1943) 26, 69

Railway Mail Association v. Corsi, 326 U.S. 88 (1945) 14

Reid v. Colorado, 187 U.S. 137 (1902) 14

Savage v. Jones, 225 U.S. 501 (1912) 17

Sinnot v. Davenport, 22 How. (U.S.) 227 (1859) 15

Terminal Railroad v. Brotherhood of Railroad Trainmen, 318 U.S. 1 (1943) 20

Townsend v. Yeomans, 301 U.S. 441 (1937) 12, 18-9, 23-4, 36-8

Union Brokerage Co. v. Jensen, 322 U.S. 202 (1944) 35-7

U.S. v. Hastings, 296 U.S. 188 (1935) 32, 42-3, 47

Welch (H.P.) Co. v. New Hampshire, 306 U.S. 79 (1939) 20

MISCELLANEOUS CITATIONS

Commodity Exchange Act, Sec. 5(a)(7) (7 U.S.C. 7a(7)) 47-8

Federal Trade Commission, Agricultural Income Inquiry (1937) 48-9

H. Rept. No. 4 to 71st Cong., 1st Sess. 39, 41, 43

H. Rept. No. 60 to 64th Cong., 1st Sess., January 21, 1916 27

Illinois Constitution of 1870 ..... 12, 60

Illinois Grain Warehouse Act 51

Illinois Public Utilities Act 51-68

Misc. Circ. No. 51, pp. 1-2, U.S. Dept. of Agric., January, 1926, reprinted 1932 ..... 27, 30, 38

Page

Packers & Stockyards Act (Tit. 7 U.S.C., Secs. 206-12) 55

Public Resolution No. 61, 74th Cong. 48

S. Rept. 1775 to 71st Cong., 3rd Sess., February 17, 1931 ..... 27, 30, 39, 41, 44

United States Warehouse Act (Tit. 7 U.S.C., Secs. 241-73) 13, 15, 18, 23, 27-50, 51, 53, 55, 58, 60-2, 64, 65

Vol. 53 Cong. Rec. Pt. 6, pp. 5925-6, April 11, 1916 31

Vol. 53 Cong. Rec. Pt. 7, pp. 7068-7085, April 29, 1916 31

Vol. 72 Cong. Rec. Pt. 8, p. 8530, H.R. 7 ..... 40, 41

Vol. 72 Cong. Rec. Pt. 8, p. 8529 41

Vol. 74 Cong. Rec. Pt. 6, p. 6138 41

Vol. 80 Cong. Rec., p. 6834 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 156 Federal 2nd, page 33.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on June 7, 1946. (R. 126) Petition for Writ of Certiorari was filed September 6, 1946, and was granted October 21, 1946. The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States, as amended. (Tit. 28 U.S.C., Sec. 347) The validity of provisions of the Illi-

nois Public Utilities Act and Article XIII of the Illinois Constitution are attacked on the ground of alleged repugnance to federal statutes.

The federal statutes involved are the United States Warehouse Act (Tit. 7 U.S.C., Sec. 241 et seq.) and Section 5a(7) of the Commodity Exchange Act (Tit. 7 U.S.C., Sec. 7a(7)), both set forth in Appendix A (*infra* pp. 71-80). The state act involved is the Illinois Public Utilities Act (*Ill. Rev. Stat.* 1945, Ch. 111⅔). The state act concededly provides expressly and in detail for comprehensive utility regulation of warehousing rates, practices, services and financial transactions. For the convenience of the court, a pamphlet copy of the Illinois Public Utilities Act accompanies this brief.

STATEMENT OF THE CASE

On July 28, 1944, Daniel F. Rice & Co.,[1] a grain commission merchant on behalf of its customers as farmers, grain dealers and processors, filed a complaint with the Illinois Commerce Commission[2] against public grain warehousemen in the Chicago terminal area. These public warehouses are defined as, and are, public utilities under the state statute. (*Ill. Rev. Stat.* 1945, Ch. 111⅔, Sec. 10(a)) Rice and its customers for some years past have been customers of such warehousemen, storing grain in their elevators and paying storage charges thereon.

The Rice complaint charged these warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and service, with abandoning public service at will,

[1] An Illinois partnership, hereinafter referred to as "Rice".

[2] An administrative board established under the Illinois Public Utilities Act with comprehensive regulatory powers over public utilities. Hereinafter referred to as "Illinois Commission".

and with numerous violations of specific state statutory provisions and state constitutional requirements. (R. 19-22) The relief prayed was an inquiry, investigation, hearings and the entry of orders and directives which would:

1. Fix and establish just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain.
2. Prohibit and eliminate discriminatory practices effected by warehousemen to their own advantage, and in discrimination against the public, such as:
   a) Mixing grain in storage so as to retain for the warehouseman's own use the highest quality grain, while delivering to public storers the very bottom of the contract grade.
   b) Trafficking in transit billing or arbitrarily withholding desirable billing from public storage customers.
   c) Manipulating and rebating storage charges to effect grain sales and preferences.
   d) Manipulating the use of preferred storage space so that public storers of grain are obliged to store in old wooden warehouses carrying exorbitant insurance rates.
   e) Delaying the loading out of grain to further the warehouseman's own sales—or prevent the removal from storage of public grain paying excessive storage charges.
3. Enforce the state constitutional prohibition against public warehousemen occupying the dual and conflicting positions of public grain warehousemen and at the same time grain dealers and merchandisers in direct competition with their storage customers.
4. Prescribe and establish reasonable, safe and adequate public grain warehouse service and facilities.
5. Prevent the unwarranted abandonment of public grain warehouse service and facilities without Illinois Commission approval.

5. Enforce the state statutory provisions requiring the prior approval of the Illinois Commission before:

   a) Securities are issued.

   b) Financial, operating and other similar contracts are entered into between the public warehouse and its affiliates.

   c) Contracts are entered into with other utilities or agreements made for the sale, lease or transfer of warehousing properties, or for the diversion of utility funds. (R. 23-4)

The Rice complaint to the Illinois Commission joined the Board of Trade of the City of Chicago as a defendant, to the end that the improvements sought in warehousing practices could be in part achieved through Board of Trade rules.[3] (R. 23, 24)

A motion to dismiss the proceedings was filed with and denied by the Illinois Commission, and the cause set for hearings commencing October 24, 1944. (R. 25-8) Thereupon, several of the warehousemen who possess licenses issued under the United States Warehouse Act filed a bill in the District Court of the United States, to enjoin: a) the members of the Illinois Commission from conducting hearings or entering orders in the cause, b) the Attorney General of Illinois from instituting any proceedings against the warehousemen for alleged violation of state statutes, and c) Rice from further prosecuting its complaint. The injunction was sought on the ground that the federal government, by the United States Warehouse Act and the Commodity Exchange Act has "preempted and occupied

[3]The Board of Trade sought an injunction in a separate proceeding. Review of the Circuit Court of Appeals' judgment in that companion case has been granted in No. 471, 473, October Term, 1946, *Illinois Commerce Commission, et al.* v. *Board of Trade of the City of Chicago.*

the field of regulation" over federally licensed public warehouses, to the "exclusion of any similar regulation" by Illinois. The validity of state authority was attacked on the ground that federally licensed warehouses were subject "solely to regulation" by the federal government. (R. 7, 8)

Three of the warehouse defendants before the Illinois Commission did not join in the federal injunction proceedings. Two of these non-participating defendants were state licensees and the third held a federal license. (R. 18)

Motions to strike the complaint for injunction and dismiss the proceedings were filed by the Attorney General of Illinois and by Rice. (R. 36-48) Such motions were allowed and an order entered on June 26, 1945, dismissing the complaint. The District Court found that:

1. The United States Warehouse Act is not a utility regulatory act, but a limited and circumscribed exercise of federal control over warehousemen who voluntarily seek and obtain a federal license.
2. The federal act does not authorize the exercise of affirmative regulatory authority over the specific issues raised by the Rice complaint, nor does it permit the grant of relief sought before the Illinois Commission.
3. State regulation over federally licensed warehouses has not been preempted, excluded or superseded. (R. 88-93)

Appeals were taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 7, 1946, that court reversed the District Court and remanded, with directions to overrule the motions to strike the complaint. (R. 126)

The opinion of the Circuit Court of Appeals will be discussed at appropriate stages of our argument.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals for the Seventh Circuit erred in holding:

a) That state authority and control may be invalidated and superseded by reason of federal regulatory authority implied and not expressly delegated.

b) That the state's comprehensive rate making power over public grain warehousemen has been superseded and that the federal agency has authority to determine rates.

c) That the state's comprehensive authority to order and direct the elimination of discriminatory practices by public grain warehousemen has been superseded.

d) That the state constitutional prohibition against a warehouseman occupying the position of public trust as a public warehouseman, and at the same time the conflicting position of a merchandiser and dealer in grain is invalid.

e) That the affirmative state regulatory authority which provides for safe and adequate public warehousing service and facilities and prevents the unwarranted abandonment of such service, has been superseded as in direct conflict with any authority over such grain warehouses delegated by Congress to a federal agency.

f) That the state requirements with respect to commission approval of contracts with affiliates, with other public utilities, and approval before securities may be issued cannot be exercised over public grain warehousemen, on the ground that the Secretary of Agriculture "has implied authority" to deal with such matters.

2. The Circuit Court of Appeals for the Seventh Circuit erred in holding that the comprehensive state utility regu-

lation of public grain warehousemen with respect to rates, practices, services and affiliate, securities and financial transactions is in conflict with, or plainly and palpably infringes the policy of the limited control provided by the United States Warehouse Act, as enacted in 1916 and finally amended in 1931, or with the Commodity Exchange Act.

3. The Circuit Court of Appeals for the Seventh Circuit erred in holding that public grain warehousemen performing public utility services in Illinois are completely exempt and immune from state regulation, and subject exclusively and solely to federal control because they have applied for and received a permissive or voluntary federal license.

4. The Circuit Court of Appeals for the Seventh Circuit erred in reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

SUMMARY OF ARGUMENT

I

Ever since the decision of this court in *Munn* v. *Illinois*, 94 U.S. 113 (1877), the regulation of public grain warehouses has been a matter of the local and domestic concern of the states. At present, forty-one states provide some form of regulation of warehouses. The relief sought by respondents in this case would result in the supersedure of such regulation.

This court will not hold that Congress intends to invalidate or suspend the exercise of the reserved powers of the states unless its purpose to do so is clearly manifested. Supersedure will result only where there is a precise coincidence of state and federal control of the particular subject matter of regulation or where there is such actual and positive conflict and inconsistency between the two systems that state control cannot be reconciled with federal action. A general delegation of authority to a federal agency will not result in supersedure of state laws unless and until that agency takes some action or makes some order which actually conflicts with existing state regulation.

These fundamental and well-established rules were not applied by the Circuit Court of Appeals in this case. Instead, that court held that Congressional action in any part of the field relating to warehouses prevents the exercise of any state regulation of such utilities. The court below did not determine that Congress clearly manifested an intention to regulate for itself, that the state regulatory functions invoked have been expressly delegated to and exercised by the Secretary of Agriculture,[4] or that actual and irreconcilable conflict existed. In the absence of such findings, there is no ground for striking down the state regulation here involved.

---

[4]Hereafter sometimes referred to as "secretary."

II

The United States Warehouse Act is limited and circumscribed in its provisions, scope and purpose. It is primarily a warehouse receipt act, providing no affirmative public utility regulation. Even as to the narrow authority granted, the only control which the secretary may exercise is negative—the revocation of voluntarily acquired licenses and the publication of findings. The acquisition of such licenses under the federal act is wholly permissive and voluntary. No license is required, even of an exclusively interstate house. The result of the opinion of the Circuit Court of Appeals is to permit a warehouseman to avoid and flaunt affirmative state utility regulation by his own voluntary act of acquiring a federal license.

The secretary, under the federal act, possesses no affirmative regulatory powers over such licensees. He cannot grant any of the relief sought before the Illinois Commission. The act provides only a "measure of control" and expressly sanctions co-existing state authority.

The 1931 amendment to the act granted the secretary exclusive control as to the limited and circumscribed power, jurisdiction and authority expressly granted by the act. The purpose of these amendments was to further the value of federal warehouse receipts.

III

The federal act is completely silent concerning each of the major issues of regulation concerning which Rice has invoked the authority of the Illinois Commission. The Illinois Public Utilities Act, on the other hand, contains specific and comprehensive provisions concerning regulation of each of the issues presented. As the Circuit Court of Appeals recognized, the United States Warehouse Act

contains no provisions requiring prior approval of contracts and arrangements with affiliates and other utilities, sales, leases, and encumbrances of utility properties or the issuance of securities. In the absence of such provisions in the federal act, state authority may not be nullified.

The secretary has been delegated no authority to establish and determine just and reasonable rates. In the absence of specific language delegating such authority, such powers cannot be exercised. The secretary may only revoke a voluntary license if exorbitant storage rates are charged. The Illinois Commission, however, has detailed and positive statutory rate-making power. Following the establishment of a rate by the Illinois Commission, full compliance with the federal requirements is achieved by filing a schedule of the rates so ordered with the secretary. Thus, there is no conflict between the two systems. The assumption by the court below that the Illinois Commission, despite its elaborate statutory machinery and expert utility regulatory staff, might fix a rate which the secretary would find exorbitant is unjustified, but in any case, supersedure is not to be determined on the basis of remote and speculative possibilities.

The state constitutional prohibition against an individual occupying the dual and conflicting positions of a public grain warehouseman and a grain dealer in no way conflicts with provisions of the United States Warehouse Act. The federal act does not authorize such a practice but does require that if the warehouseman has an interest in the grain for which a receipt is issued, that fact should be noted on the receipt for the protection of receipt holders.

Discriminatory rates and practices of a serious, unethical and unbusinesslike character may be prevented by the Illinois Commission, while under the federal act, no such

result may be reached. The latter act only forbids discriminations in the receipt of grain for storage.

The Illinois Commission is empowered to order and compel the establishment of safe, adequate, and efficient grain warehousing service and facilities, whereas under the United States Warehouse Act the secretary may go no farther than to ascertain that a particular warehouse for which a license is sought is suitable for storage of the particular commodity concerned. The secretary has no power to order a licensee to correct, improve or change his services and facilities.

The public interest in the prevention of unwarranted abandonment of public grain warehousing service and capacity is protected by the Illinois statute. The federal act permits service to be abandoned and the license surrendered without penalty.

Respondents have made no showing of the existence of federal authority over the matters of regulation concerned or of an irreconcilable conflict between state and federal provisions. Therefore, under established principles of supersedure, state regulation must be sustained. There is no question of exposure to dual regulation or penalties presented in this case. To nullify state control would be to free warehousemen from any effective regulation. This result could not have been intended by Congress.

ARGUMENT

I

FEDERAL NULLIFICATION OF STATE AUTHORITY RESULTS ONLY WHERE A PRECISE COINCIDENCE OF REGULATION OR AN IRRECONCILABLE CONFLICT IS CLEARLY DEMONSTRATED.

A. Public grain warehouses are matters of local and domestic concern, traditionally subject to regulation by the states.

The public grain warehouses involved are situated and their business carried on exclusively within the state of Illinois. In response to the pressures of the Granger movement, the Illinois Constitution of 1870, by a separate article devoted entirely to the subject of grain warehouses, and the statutes of Illinois enacted the following year, provided for state regulation of public warehouses. The constitutionality of such regulation, and particularly the right of Illinois to fix warehouse charges, was attacked by Chicago warehousemen, and culminated in the famous case of *Munn* v. *Illinois*, 94 U.S. 113 (1877), where the concept of businesses "affected with a public interest" had its American origin.

In the *Munn* case the court held that regulation of public grain warehouses "is a thing of domestic concern". Following that decision, this court has repeatedly recognized that regulation of public warehouses is a matter of local and domestic concern. Thus, in *Townsend* v. *Yeomans*, 301 U.S. 441, 458 (1937), state regulation of Georgia tobacco warehouses was upheld as in furtherance of the state's "local interests".

More recently in *Davies Whse. Co.* v. *Bowles*, 321 U.S. 144 (1944), the court examined the vast scheme of state regulation of public warehouses in determining that such warehouses were public utilities within the meaning of the

Emergency Price Control Act and thus not subject to price control. The court said (pp. 148-9):

> "In *Munn* v. *Illinois*, 94 U.S. 113 (1877), this Court recognized that the business of public warehousing is 'affected with a public interest' and that its regulation by the state is appropriate and constitutionally permissible."

While the validity of state regulation was not in issue, the court necessarily recognized as a means of reaching its decision that a pattern of state warehouse regulation still exists in all its virility, even in the face of the United States Warehouse Act.

The movement for state regulation of warehouses has grown so that today such regulation is provided in 41 states, 30 of which regulate warehouse rates and charges.[5]

Public grain warehouses are the oldest form of state regulated public utility. Their regulation has become a traditional function of state government. If respondents' position were sustained, the regulatory systems of not only Illinois but of all of these 41 states would be seriously weakened, if not nullified and voided. Is it possible that Congress intended such a drastic result without having expressed such a purpose in conclusive terms?

B. Congressional intent to invalidate state legislation is never presumed. It must be clearly manifested.

An attack upon the validity of a state statute, whether on the ground of conflict with federal statutes, or with constitutional provisions, is of equal consequence to state sovereignty. In both instances, every presumption is indulged in favor of the validity of the state act. Unconstitutionality

[5] A tabulation of the states which provide for regulation of public warehouses is attached to this brief as Appendix B, pages 81-2.

will not be declared if a method of construction is available which would save the state act. So, too, the court will not strike down state authority on the ground of supersedure if it is possible to harmonize the state and federal systems.

In *Illinois Cent. R. R. Co.* v. *Pub. Utilities Comm. of Illinois*, 245 U.S. 493 (1918), the following consistently applied rule of construction was announced (p. 510):

> "In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is *clearly manifested.*"[6]

Similarly, in *Reid* v. *Colorado*, 187 U.S. 137 (1902), the court said (pp. 148, 153):

> "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. • • •
>
> "'The principle is universal that legislation, whether by Congress or by a State, must be taken to be valid, unless the contrary is made clearly to appear; • • •.'"

More recently, this court reiterated these fundamental principles in rejecting the claim of federal conflict with and invalidation of state authority, in *Railway Mail Association* v. *Corsi*, 326 U.S. 88, 97 (1945):

> "Congress must *clearly manifest* an intention to regulate for itself • • • before the police power of the state is powerless."

---

[6] Italics in quotations throughout this brief have been supplied for emphasis.

In the instant case Congress has not provided for affirmative regulation of public warehouses. As we shall later point out, the United States Warehouse Act is a limited warehouse receipt statute. Nowhere in federal legislation is there a manifestation by Congress of an intent to invalidate affirmative state regulation of warehouses as public utilities. Instead, the act itself, as well as surrounding legislative history, firmly supports the conclusion that Congress intended to preserve state authority and authorized the federal agency to cooperate with the regulatory efforts of the states.

C. Principles of supersedure.

Sound public policy has dictated a refusal to strike down state authority when a claimed conflict with federal control is urged, unless a) there is a precise coincidence of state and federal control of a particular subject matter of regulation, or b) there is such actual and positive conflict and inconsistency in the two systems that state action cannot be reconciled with federal control.

This court, in recognition of the sovereign power of the states, discountenances inroads thereon by implication, and has refused to stifle state action unless what the state has required in the light of what Congress has ordered would truly entail contradictory duties and actual, not mere generalized or speculative conflicts.

These principles of construction have been repeatedly announced. As early as *Sinnot* v. *Davenport*, 22 How. (U.S.) 227, 243 (1859), the court said:

> "We agree, that in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together; * * * ."

More recently these same general principles were succinctly stated by Mr. Chief Justice Hughes in *Kelly v. Washington*, 302 U.S. 1 (1937). It was there claimed that a state law requiring the inspection of hulls and machinery of motor driven boats had been superseded by various federal enactments having to do with vessels plying federal waters. The boats concerned were federally registered or licensed, and were subject to numerous federal safety requirements. Federal acts also required the inspection of hulls and machinery of steam vessels and motor driven boats carrying passengers or freight. Because there was no specific federal provision for the inspection of hulls and machinery of motor driven boats not carrying passengers or freight, state authority in this precise field of control was sustained by a unanimous court. The question was stated as follows (p. 9):

> "The state court took the view that Congress had occupied the field and that no room was left for state action in relation to vessels plying on navigable waters within the control of the federal government. * * *
>
> "This argument, invoking a familiar principle, would be unnecessary and inapposite if there were a direct conflict with an express regulation of Congress acting within its province. The argument presupposes the absence of a conflict of that character."

The principles of supersedure were crystallized in the following words (pp. 9-10):

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. * * * States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may deter-

> mine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. *Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'*"

The court refused to nullify state authority and sovereignty in the absence of a showing of direct and positive repugnance or irreconcilable conflict between state and federal laws. This well established rule was not applied in the instant case by the court below. Reference to a few of the court's decisions which further illustrate the application of this rule seems warranted.

Savage v. *Jones*, 225 U. S. 501 (1912) held that a federal statute prohibiting misstatement of the contents of food products did not invalidate a state law requiring complete disclosure of such contents. The court said with respect to the federal act (p. 532):

> "But this does not cover the entire ground. It is one thing to make a false or misleading statement regarding the article or its ingredients, and it may be quite another to give no information as to what the ingredients are."

And further, with respect to the general principle, (on p. 533):

> "But the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other

words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in *actual conflict* with the law of the state. This principle has had abundant illustration."

In *Townsend* v. *Yeomans*, 301 U. S. 441 (1937), it was claimed that the broad federal Tobacco Inspection Act superseded a Georgia statute fixing rates and charges of tobacco warehousemen. The federal act was replete with provisions controlling the inspection, marketing and handling of tobacco. The court rejected the argument that the state statute was nullified and held (p. 454):

> "*It is inconceivable that the Congress* in endeavoring to aid the tobacco growers in sorting or 'grading,' and thus to facilitate the marketing of their tobacco, *intended to deprive them of the protection they already had against extortionate charges of the warehousemen upon whom they depended in making their sales.* Instead of frustrating the operation of such state laws, the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States in protecting the farmers' interests. In this view we find no ground for the contention that Congress has taken possession of the field of regulation to the exclusion of state laws which do not conflict with its own requirements.
>
> "The case calls for the application of the well-established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the State of its police power as to matters not covered by the federal legislation is not to be implied unless the latter fairly interpreted is in *actual conflict* with the state law."

The *Townsend* case is noteworthy, since the court found that Congress had not undertaken "to regulate the charges of the warehousemen" (p. 452), and as a consequence the state was free to fix warehousing charges. In the present case, Congress, in the United States Warehouse Act, has

not delegated authority to fix, determine or regulate warehousing charges.

It is also pertinent that in the *Townsend* case the court, in construing the federal law, found that Congress had "expressly afforded and emphasized the opportunity for cooperation with the States" as a legislative negation of any intent to abrogate state powers. The provision in the Federal Tobacco Inspection Act to which the court referred provides that the secretary "may cooperate" with the states. The United States Warehouse Act similarly provides that in the discretion of the secretary "he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, * * * ". (Sec. 29)

Again in *Hill* v. *Florida*, 325 U. S. 538, 539 (1945) involving the validity of a Florida statute regulating labor unions, the court stated the governing standard of construction when supersedure is the issue by saying that the "only question" to be decided was whether the state act as applied was in "irreconcilable conflict" with the National Labor Relations Act. It is not sufficient that a speculative or argued conflict is shown. Before the court will nullify state authority, there must be a demonstration of conflict between state and federal control which is impossible to reconcile or harmonize. Supersedure will not follow because Congress has legislated in the general field, for if that were the rule, all local and state authority would be vulnerable to the claim of federal nullification by reason of the vast volume of federal legislation now on the books touching upon almost every phase of our social, community and economic life.

In addition to this salutory rule of construction, there is another principle which would preserve state regulation of warehouses. This court has repeatedly held that even

though Congress has delegated authority to a federal agency, in the absence of an exercise of that authority through an order which actually conflicts with an existing state directive, no supersedure will result. In other words, a mere potential conflict which may arise in the future will not invalidate state authority.

In *Terminal Railroad* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 4 (1943), the Illinois Commission had issued an order requiring the use of caboose cars on interstate trains in terminal areas. It was urged that the federal government had occupied the field and superseded the state requirement through the Boiler Inspection Act, Safety Appliance Act, Interstate Commerce Act, and the Federal Railway Labor Act. Under these comprehensive federal statutes the federal agency had very broad authority over the service and practices of railroads, and was empowered to issue orders dealing with the very subject matter involved. Nevertheless, the court held that the federal statutes themselves did not "lay down any requirement that cabooses shall or shall not be used on any of the runs in question. * * * at least in the absence of such action these acts do not themselves preclude the state order, * * *."

In *H. P. Welch Co.* v. *New Hampshire*, 306 U.S. 79 (1939), the court considered a state statute limiting the number of hours of continuous duty of drivers of certain types of motor carriers. It was urged that the state act was superseded by the provision of the Federal Motor Carrier Act empowering the Interstate Commerce Commission to "establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees * * *." The violation of the state statute had occurred at a time when the Federal Motor Carrier Act was in full force and effect, but before the Interstate Commerce Com-

mission had established any requirements in that specific field. In refusing to decree supersedure of the state statute under such circumstances, the court stated (p. 85):

> "* * * it cannot be inferred that Congress intended to supersede any state safety measure prior to the taking effect of a federal measure found suitable to put in its place. Its purpose to displace the local law must be definitely expressed. * * *
>
> "Plainly Congress by mere grant of power to the Interstate Commerce Commission did not intend to supersede state police regulations established for the protection of the public using state highways."

The Circuit Court of Appeals in this case has erroneously assumed that a mere possibility of future conflict, even though none presently exists, warrants the invalidation of the state regulatory system. The respondents have not disclosed a single instance where the Secretary of Agriculture, who administers the federal acts here involved, has performed any of the regulatory functions at issue. Indeed, federal statutes do not empower him to perform such functions.

D. The decision of the Circuit Court of Appeals.

The court below apparently did not heed or reasonably apply the established principles governing supersedure questions. It held:

> "In our view, all of the matters charged in the Rice complaint, on which the Commission has assumed jurisdiction and is asked to act, concern directly or indirectly the operation of federally licensed warehouses and the storage of grain therein for which receipts are issued. The allowance of such relief by the Commission on the charges thus made would conflict with the Warehouse Act or 'plainly and palpably infringes its policy.' The exercise of such authority by the Com-

mission would thwart the primary purpose which Congress sought to accomplish." (R. 122-3)

What, then, is the federal policy being palpably infringed, or the congressional purpose being thwarted, that would require such drastic results? Here we must resort to conjecture, for the court below does not define or discuss that policy except to say that since Congress has attached importance to warehouse receipts:

> "From their very nature it is reasonable to conclude that Congress intended that the federal government take over all authority necessary to preserve their legality, negotiability, safety and value. • • • Exclusive jurisdiction over the receipts having been conferred upon the Secretary, it seems unreasonable to conclude that he should be required to share with the state jurisdiction over the grain against which the receipts were issued and over the warehouses in which such grain was stored." (R. 117-8)

The Circuit Court of Appeals has not determined that Congress did "clearly manifest an intention to regulate for itself" or to supersede or suspend the reserved powers of the states. Instead, the court finds it "reasonable to conclude" that if an exclusive federal warehouse receipts act is passed, then, *ipso facto*, all state regulatory control over the institutions issuing receipts must necessarily be abrogated. According to this holding, federally licensed warehouses would be completely immune from all state or local regulation and control. In addition to being free of state public utility regulation, these public warehouses would also be free from state and local fire laws, zoning ordinances and blue sky laws.

The enactment of an exclusive federal warehouse receipts act of very limited scope does not thereby preclude all other forms of state regulation of warehouses. Congress has circumscribed its control and has remained silent with

respect to the affirmative regulation of rates, services, practices and finances of such warehouses, thereby permitting such state regulation which lies completely outside the limited field of federal control.

The court below did not determine that the state regulatory functions invoked have been expressly delegated to and were being exercised by the secretary. Instead, the court freely held that there was *implied* federal authority in the absence of express delegations. (R. 118, 122) Such action violates the fundamental doctrine that administrative powers are never presumed, but must be expressly delegated by legislation. Building upon this error, the court below invalidated specific and comprehensive state regulatory functions. No such violent annihilation of state action has ever been sanctioned.

The United States Warehouse Act, as we will later point out in detail, was intended to secure the integrity of warehouse receipts as an aid to the marketing of agricultural products. State regulation, far from infringing upon or thwarting this congressional policy and purpose, is in complete harmony therewith and supplementary thereto, serving to further orderly marketing. The secretary may prevent receipts from being issued without the proper grade and quantity of grain to support them, but the Illinois Commission protects receipt holders in an entirely different field—by securing storage at reasonable rates, under fair and non-discriminatory conditions, and by directing the institution of adequate service under sound financial conditions. These state regulatory functions do not even remotely infringe upon or thwart federal policy. As this court well said in *Townsend* v. *Yeomans*, 301 U. S. 441, 454 (1937):

> "It is inconceivable that the Congress in endeavoring to aid the tobacco growers in sorting or 'grading,'

and thus to facilitate the marketing of their tobacco, intended to deprive them of the protection they already had against extortionate charges of the warehousemen upon whom they depended in making their sales."

Congress has not occupied the field of state regulation here involved. *The secretary is without power or authority to grant any of the relief sought before the Illinois Commission.* The injunction is sought as a means of escaping all regulation. If the court should nullify state regulatory authority, it could not thereby create or transfer such regulatory power to the secretary. Federal warehousemen would be immune from those regulatory powers found in state law but not in the federal act. The position of the respondent warehousemen, apparently upheld by the court below, is that if federal authority exists as to *any* one aspect of warehouse control, then *all* aspects of state regulation are nullified. Counsel would have this court sanction inroads upon state rule by implication; annihilation of state sovereignty without a corresponding exercise of federal power and without a semblance of actual conflict or inconsistency; and abrogation of state utility regulation without providing a substitute. In short, the warehousemen seek destruction of the state system and the institution of a regulatory vacuum. Their fight is being made not because of a preference for federal over state control, but because of a warm desire to be entirely free from affirmative regulatory authority. The issuance of the injunction would have that consequence.

The principal case relied upon by the Circuit Court of Appeals is *Cloverleaf Butter Co.* v. *Patterson,* 315 U.S. 148 (1942) which was described as being the case "on its facts and questions decided most similar to the instant one . . ." (R. 112) The facts of the *Cloverleaf* case have no resemblance to the instant case. The question there raised was the validity of state inspection and seizure of pack-

ing stock butter which went into the manufacture of processed butter. Federal authority existed to regulate the production of processed butter, and the conditions under which it was made, to inspect the finished product and to seize it if it were found to be deleterious to health. As the court pointed out, the "entire process of manufacture is subject to federal supervision" (p. 154) and the state control "conflicts with the purpose or provisions of the federal legislation * * *." (p. 167) Hence there was a precise coincidence of federal regulatory controls and the attempted state function. As the court stated (p. 169):

> "To uphold the power of the State of Alabama to condemn the material in the factory while it was under federal observation and while federal enforcement deemed it wholesome would not only hamper the administration of the federal act but would be inconsistent with its requirements. * * * Since there was federal regulation of the materials and composition of the manufactured article, there could not be similar state regulation of *the same subject.*"

The court did not say that the federal agency had "implied" authority to regulate such butter. It held that "confiscation by the state of material in production nullified federal discretion over ingredients." (p. 168) The court indicated that federal statutes must be strictly construed when the question is one of supersedure, saying (p. 156):

> "When the prohibition of state action is not specific but inferable from the scope and purpose of the federal legislation, it must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state regulation."

In any event, the *Cloverleaf* case turned on a five to four decision, and shortly thereafter, the views expressed and some of the exact language used by Mr. Chief Justice

Stone in the dissenting opinion (315 U.S., at 170) became the majority opinion in *Penn Dairies* v. *Milk Control Commission*, 318 U.S. 261, 275 (1943).

Another case cited by the lower court was *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). In that case the court held that the Pennsylvania Alien Registration Law was superseded because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress". The court, however, was careful to emphasize that the legislation involved was in a field:

> "* * * which affects international relations, the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority. Any concurrent state power that may exist is restricted to the narrowest of limits; * * *." (p. 68)

In the later case of *Allen-Bradley Loc.* v. *Wisc. Emp. Rel. Bd.*, 315 U.S. 740 (1942), the court took occasion to limit the effect of the *Hines* case in the following language (p. 749):

> "* * * we were more ready to conclude that a Federal Act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways."

We submit that on the basis of the established standards and principles announced by this court, no ground for striking down state acts providing the type of regulation here involved has been revealed.

We turn now to an analysis of the federal and state statutes.

II

UNITED STATES WAREHOUSE ACT

A. The federal act is limited and circumscribed in its provisions, scope and purpose.

Congress enacted the United States Warehouse Act for the purpose of establishing a warehouse receipt that would be more readily accepted as collateral on loans. Its aim was to avoid certain gross dishonesties that had been practiced by warehousemen, such as issuing receipts for products not in store, failing to cancel receipts after delivery, or returning an inferior grade and a smaller quantity of the stored commodity because of inadequate inspection and weighing practices.[7]

The act in nature, form and intent is essentially a warehouse receipt act. It does not in any respect provide for affirmative regulation. It certainly does not resemble a utility regulatory system. It provides for negative control through the revocation of a permissive license, and delegates a minimum amount of authority to the secretary.

---

[7]Legislative history of the statute bears out the very limited purpose to be served. In 1916 when the act was passed, the House Report stated:

> "A study of the provisions of the bill will show that great care has been taken for the protection of the integrity of the receipt issued from the warehouses proposed to be licensed, • • • "

When the act was amended in 1931, Congress again gave recognition and emphasis to the statute's objective to protect the farmers from dishonest warehousemen and "enhance the value of receipts for collateral purposes". H. Rept. 60, 64th Cong., 1st Sess., January 21, 1916; S. Rept. 1775 to 71st Cong., 3rd Sess., February 17, 1931; Misc. Circ. No. 51, pp. 1-2, issued by the U.S. Dept. of Agric. January, 1926, reprinted 1932; See discussion of legislative history in amicus curiae brief of National Association of Railroad and Utilities Commissioners, pp. 53-64.

A summary of the entire act significantly reveals its very limited nature. Under the act the secretary is authorized to:

(a) License warehouses "suitable for the proper storage of the particular agricultural product" upon application to him. (Sec. 4)

(b) Investigate and inspect warehouses and examine their books. (Sec. 3, 27)

(c) Prescribe duties of licensed warehouses with respect to the care of and responsibility for stored products "within the limitations" of the act. (Sec. 3)

(d) Prescribe form and terms of bond. (Sec. 6)

(e) License persons to act as inspectors, samplers and classifiers of agricultural products. (Sec. 11)

(f) Suspend or revoke licenses of inspectors, samplers and classifiers, after opportunity for hearing, for violation of the act or for improper conduct. (Sec. 12)

(g) Charge fees for the inspection of warehouses and the issuance of licenses to warehousemen or inspectors. (Sec. 10)

(h) Establish standards for agricultural products. (Sec. 19)

(i) Examine products stored and publish findings if warehouseman is not performing his duties under the act. (Sec. 24)

(j) Suspend and revoke warehouse licenses after opportunity for hearing for violation of the act or rules, or upon the ground that "unreasonable or exorbitant charges have been made for services rendered". (Sec. 25)

(k) Make rules and regulations deemed necessary for the efficient execution of provisions of the act. (Sec. 28)

(l) In his discretion, "to cooperate with State officials charged with enforcement of State laws relating to warehouses, warehousemen, * * * but power, jurisdiction and authority conferred upon the Secretary * * * under this Act shall be exclusive" with respect to federal licensees. (Sec. 29)

Licensed warehousemen are obligated to:

(a) Agree as a condition to issuance of license to comply with terms of the act and rules thereunder. (Sec. 4)

(b) Execute a bond to secure faithful performance of obligations under the act. (Sec. 6)

(c) Receive for storage so far as his capacity permits agricultural products tendered "without making any discrimination between persons desiring to avail themselves of warehouse facilities." (Sec. 13)

(d) Keep fungible agricultural products of different grades separate. (Sec. 16)

(e) Issue warehouse receipts only for agricultural products actually stored, which receipts are to embody certain specified information. (Sec. 17, 18)

(f) Not issue further receipts for same products while original receipt is outstanding, unless lost or destroyed, in which case a new receipt may be issued in compliance with the "laws of any State applicable thereto" in any place other than federal territory. (Sec. 20)

(g) Deliver products without unnecessary delay when demanded by receipt holder. (Sec. 21)

(h) Cancel receipts upon delivery of stored products. (Sec. 22)

(i) Keep records of products stored and withdrawn, receipts issued and cancelled. (Sec. 23)

Penalties are provided for falsely representing oneself as a federally licensed or bonded warehouse, issuing a fraudulent receipt, fraudulently classifying or weighing

products stored, or converting such products to one's own use.

That is the sum total of the United States Warehouse Act. The complete impoverishment of the secretary's affirmative authority under the act is revealed by Section 24. There the secretary is authorized to examine licensed warehousemen and when he determines that they are not performing their duties fully under the act or rules, he "may publish his findings". He cannot order a change in operations or practice. He cannot take any affirmative step to correct these determined violations. But he is permitted to make the violations publicly known.

All aspects of the United States Warehouse Act as indicated by the summary above, relate to the sole purpose and objective of Congress: the creation of a more dependable warehouse receipt.

B. The acquisition of a license under the federal act is wholly permissive and voluntary.

The method employed by Congress to carry out its objective furnishes a key to the highly circumscribed character of the federal authority involved. Control is acquired through the *voluntary or permissive* acquisition of a license. No warehouseman, even though engaged exclusively in storing agricultural products for interstate commerce,[8] is required or compelled to secure a license to conduct his operations.[8] But *if he so desires,* a warehouseman may apply

---

[8]The permissive character of the statute has been regularly referred to by Congress and in bulletins of the department. Misc. Circ. No. 51, p. 2:

> "The law does not require every warehouseman to be licensed. This is an important feature. If all warehousemen had to operate under the law, that would mean that the good and the bad, the honest and the dishonest alike would be licensed."

S. Rept. No. 1775, 71st Cong., 3rd Sess., p. 2: The 1931 amendment "does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal act."

for and obtain a federal license. The federal control, limited and circumscribed as it is, rests upon the option of the warehouseman. The only sanctions applied against licensed warehousemen by the act (aside from criminal penalties for fraudulent issue of warehouse receipts or unlawful removal of products stored) are publication of the results of the secretary's investigation, or suspension or revocation of a license. In the latter event, the warehouseman is *entirely free* to conduct his business (even under the very terms which led to the revocation) *without* a federal license. Nowhere in the statute is the secretary granted powers necessary to adequate public utility regulation: Authority to issue orders or directives or to make decisions on any of the multitudinous problems which constantly arise in this field.

The sketchy nature of this system of "regulation" is explainable by a reluctance of Congress to enter a traditionally local field of regulation, and a decided uncertainty over the constitutionality of mandatory and comprehensive federal regulation of warehousing activities.[9]

---

[9]Constitutionality of the U. S. Warehouse Act was discussed in Congressional debate in the House, Vol. 53, Cong. Rec. Pt. 7, pp. 7068-7085, April 29, 1916. The following remark was made on page 7070:

> "The proponents of the bill, however, claim that the regulatory provisions are valid because they are permissive only, that is, they apply only to such persons as apply for licenses and agree to be bound by them."

At another point in the Congressional debate, Mr. Lever, sponsor of the bill said (Vol. 53, Cong. Rec. Pt. 6, pp. 5925-6, April 11, 1916):

> "I wish to emphasize that the provisions of this bill are permissive and in no sense compulsory. No warehouse is forced to come into the system. That is left entirely to the individual wishes of each warehouseman. He will determine the advantages and disadvantages of the situation. We have deliberately made the bill permissive rather than compulsory.
>
> "I wish also to point out very distinctly that the system proposed here cannot interfere with any system organized under

On the basis of the ruling of the lower court, a warehouseman, by voluntarily securing a permissive federal license, would completely immunize himself from all state regulation. Not only would the licensed warehouseman be free of state controls over the issuance of warehouse receipts, or the other limited subjects of control specifically delegated to the secretary, but in addition he would be free from the state's affirmative authority to prescribe reasonable rates, adequate services, non-discriminatory practices, and sound financing—functions which the secretary is powerless to perform under the federal act. The warehousemen would be able to avoid and flaunt affirmative utility regulation completely by securing a federal license. State sovereignty would then be nullified not by Congress, but by the whim of quasi-public institutions that should be regulated. Certainly, Congress could not have intended such a result.

C. The secretary does not possess any affirmative regulatory powers.

The United States Warehouse Act was not intended to and does not constitute a utility regulatory statute. There is a complete absence of provisions for mandatory or directory establishment of reasonable rates and practices, adequate service, or sound security and financial relationships.

The federal act fails to deal with the following subjects which are of fundamental importance to any regulatory system and which are traditionally delegated by legislation

---

state or local authority. I recognize the value of state and local systems of warehousing farm products, and I would not in the least hamper them. I believe emphatically that there is ample work for both systems to do, and that the two will quickly harmonize their efforts and aims."

See also *U. S.* v. *Hastings*, 296 U. S. 188, 198 (1935) where the federal government urged that the permissive character of the statute had great weight in determining whether Congress had encroached upon the powers of the states.

to administrative agencies if affirmative regulation and control is the aim:

a) No authority is granted the secretary to order or direct a licensed warehouse to take any affirmative action. Indeed, the secretary is without power to issue any regulatory order.

b) No requirement is made for the preparation of findings of fact and conclusions of law.

c) The act fails to set forth legislative standards governing administrative policy upon those regulatory matters involved before the Illinois Commission.

d) No power is delegated to the secretary to conduct hearings generally. True, the statute requires that before a license may be suspended or revoked, the licensee shall have an opportunity for a hearing. (Sec. 25) Nothing further is said in the statute with respect to such hearings. There is no grant of authority to administer oaths, to take depositions, issue subpoenas, conduct the hearings publicly or privately, maintain a record of such hearings, or such other matters as are customarily contained in legislation which both empower the conduct of administrative hearings and at the same time surround them with the safeguards of fair play and due process. The secretary has supplemented that statutory provision in Regulation 10, Section 4. Even a casual reading of that regulation emphasizes the total lack of the fundamental prerequisites of a hearing between contending parties.

e) No provision is made for rehearings or for judicial review. This latter omission speaks eloquently of the lack of adjudicatory and mandatory powers in the secretary.

f) Collateral regulatory authority is completely lacking. So, for example, when rates are involved there should be provisions for reparation awards, for authority to make valuations of property, determi-

nations of proper depreciation charges, the maintenance and reporting of comprehensive financial data and operating results. No such authority is possessed by the secretary.

The federal act in its present form could not be constitutionally sustained as a proper legislative delegation of administrative authority if construed to regulate rates, discriminatory practices, the adequacy of service or security issues and financial transactions. The statute is devoid of those required constitutional safeguards of procedural due process, in that appropriate legislative standards are lacking, no requirements are made for specific findings of fact, and no provision is made for judicial review: *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 415, 432 (1935); *N.L.R.B.* v. *Jones and Laughlin*, 301 U. S. 1, 47 (1937); *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 345-6 (1937); *Myers* v. *Bethlehem Corp.*, 303 U. S. 41, 49 (1938).

The United States Warehouse Act completely lacks the normal and customary provisions found in any system of affirmative utility regulation. This lack of requisite regulatory provisions again graphically demonstrates that the act is only a limited warehouse receipt act. It was intended as a supplement to and not the executioner of existing state authority.

The Circuit Court of Appeals erroneously speaks of the federal act as granting "regulatory power", "affirmative authority" (R. 121), and "express authority" over rates and discrimination. (R. 122) The secretary was not delegated any affirmative or regulatory authority. He is completely without power to grant any of the relief prayed before the Illinois Commission, or to order any licensed warehouse to change its rates or practices.

D. Congress has provided only a "measure of control" by the United States Warehouse Act and has expressly sanctioned co-existing state authority.

In those instances where the United States Warehouse Act has been discussed or referred to by this court, it has been recognized as a limited and circumscribed statute which afforded only a "measure of control". In *Federal Compress & Whse. Co.* v. *McLean,* 291 U. S. 17 (1934), the court said, in sustaining a state tax upon a federally licensed warehouse (pp. 22-3):

> "The Warehousing Act confers upon licensees certain privileges and secures to the national government, by means of the licensing provisions, a measure of control over those engaged in the business of storing agricultural products who find it advantageous to apply for the license. The government exercises that control in the furtherance of a governmental purpose to secure fair and uniform business practices."

More recently, in *Union Brokerage Co.* v. *Jensen,* 322 U. S. 202 (1944), the same characterization of the Warehouse Act was expressed. In that case Union, a custom house broker, was licensed by the Treasury Department. Minnesota required foreign corporations doing business in the state to secure a certificate and pay a fee as a prerequisite to maintaining an action in the state court. The state law was attacked on the ground of repugnance to the federal licensing statute. The court sustained the state authority on the ground that federal control was limited and did not conflict with the interests sought to be protected by the state. The court said in this regard (pp. 207-8):

> "In a situation like the present, where an enterprise touches different and not common interests between Nation and State, our task is that of harmonizing these interests without sacrificing either. The proper attitude

> of mind for making such an accommodation is illustrated by *Federal Compress Co.* v. *McLean*, 291 U. S. 17. *The Tariff Act of 1930 in this case, as the Warehousing Act in that case*, confers upon licensees certain privileges, and secures to the Federal Government by means of these licensing provisions a *measure of control* over those engaged in the customhouse brokerage business. But such *circumscribed control* by the Federal Government does not imply immunity from control by the State within the sphere of its special interests."

The limited and "circumscribed control" found in the Tariff Act of 1930 was considered similar to the United States Warehouse Act, which secured only a measure of control over licensed warehouses. In the *Jensen* case the license issued under the limited and circumscribed Federal Tariff Act did not exclude state control of the licensed custom house broker. Similarly the limited United States Warehouse Act should not preclude state utility regulation of licensed warehousemen.

Finally, in *Townsend* v. *Yeomans*, 301 U. S. 441, 457 (1937), the court again reiterated its characterization of the United States Warehouse Act as providing only limited control.

Congress itself expressly acknowledged that the act had narrow limits when in Section 3 it authorized the secretary

> "* * * to prescribe, *within the limitations of this Act*, the duties of the warehousemen * * * with respect to their care of and responsibility for agricultural products stored therein."

Congress also recognized and expressly sanctioned the co-existence of state laws operating upon licensed warehousemen. The continued administration of state warehouse regulations was intended and anticipated.

Section 18 of the federal act provides that "unless otherwise required by the law of the state", a warehouse receipt

issued for other than fungible products, may omit compliance with sub-paragraph (g) of that section. Then, again in Section 20, relating to the issuance of substitute warehouse receipts when the original is destroyed, it calls for "compliance with the laws of any state applicable thereto".

Finally, in Section 29 it is expressly provided that the secretary in his discretion

> "* * * is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, * * *."

By this provision, recognition is given to the continued existence of state laws which would operate upon federally licensed warehousemen—and thus would provide an opportunity for the secretary's cooperation in a coordinated and more complete form of regulatory control. If supersedure occurs there is no state law left in effect relating to the warehouses under the secretary's jurisdiction. Certainly the plain language of the statute authorizing cooperation negatives the argued congressional intention to preempt the field and exclude the states. As the court said in the *Jensen* case (p. 209):

> "Where the Government has provided for collaboration the courts should not find conflict."

Congress must have had knowledge of the extensive state regulation of warehouses which now exists in forty-one states. (Appendix B) Were respondents' position sustained, these state regulatory systems would be nullified and voided. It is inconceivable that Congress would intend to invalidate existing extensive state regulation, in a local field normally reserved for the states, by the enactment of a circumscribed federal statute whose limited control is provided solely by a permissive, voluntary license. As the court said in *Townsend* v. *Yeomans*, 301 U. S. 441, 457 (1937):

> "Instead of frustrating the operation of such state laws, the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States * * *."

The provision for cooperation in the Federal Tobacco Inspection Act which was construed by the *Townsend* case is similar to the provision in the United States Warehouse Act.

E. Effect of the 1931 Amendment.

Respondents and the Circuit Court of Appeals place principal reliance for supersedure upon a 1931 amendment to Section 29 of the United States Warehouse Act. That section as originally enacted provided in part:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, * * *."

This provision was unusual in federal legislation and made the federal authority entirely subservient to state warehouse regulation of any type, even in cases of conflict. Under that system, minimum federal requirements to insure dependable warehouse receipts were destroyed by state laws permitting loose practices in the issuance of receipts.[10]

Congress amended Section 29 to establish the federal act as supreme, but only with respect to those specific

[10]In Misc. Circ. No. 51, issued by the U. S. Dept. of Agric. in 1926, the federal administrator on pages 7-8 described an instance where state laws permitted warehousemen to ship a product from one warehouse to another if the first was filled. Grain, for example, would be presented, a receipt issued, but the grain stored elsewhere not under the warehouseman's control; and it would frequently happen that when the farmer presented his receipt and demanded delivery, the grain was not available.

phases of control delegated to the secretary. The sole purpose of the amendment was to strengthen the value of warehouse receipts by eliminating conflicting state provisions.

The House Committee report (H. Rept. No. 4, 71st Cong., 1st Sess., p. 4), states:

> "Under Section 29 * * * of the law as at present, if the Federal Act *in any way conflicts with the State law, the Federal law becomes subservient* to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. *This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain.* Bankers generally have recognized the worthy purposes of the warehouse act, but when they are approached to loan large amounts they view section 29 of the present law with considerable misgiving. To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom."

The Senate Committee report (S. Rept. No. 1775, 71st Cong., 3rd Sess., p. 2), is similar:

> "The effect of this wording [in Section 29 before its amendment] is to make the Federal act subservient to State acts wherever there is a conflict. *As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes.* The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bot-

tom. * * * This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task."

This limited purpose of the 1931 amendment is clearly borne out by Congressman Clark of New York, who sponsored the bill in the House and stated:

"The only section of that bill that should raise any question at all in any member's mind is the Sec. 29 amendment. Under the present law, if the Federal act in any way conflicts with State laws, the Federal act becomes subservient to the State law in so far as there is *conflict*. The result is that the Federal law can be negatived by State legislation. This condition has put a severe limitation at times on Federal warehouse receipts attaining that degree of usefulness that they should have and that the Congress intended that they should have for collateral purposes. In fact, *this very limitation can defeat the very intent of Congress and render worthless as collateral the receipts issued under the law.* Any clause or phrase in the law which raises a doubt in the banker's mind about the receipts cast a cloud on their collateral value. *As the one big purpose of the Warehouse Act was and is to convert the farm products into collateral value,* and as this act during the past ten years has proved its value to the farmer and his cooperative associations, we should not hesitate to perfect it and make the warehouse receipts issued thereunder above suspicion." (Vol. 72, Cong. Rec. Pt. 8, p. 8530, H.R. 7.)

It should be noted that in the committee reports and in the debates, the reference is to "conflicts" with state laws, and no mention is made of the areas of state regulation

that are not included in the federal act. The co-existence of state authority outside the limited field covered by the federal warehouse receipt control is tacitly recognized.

Significantly the legislative history surrounding the 1931 amendment contains no discussion of the desire, intent or purpose of the legislators to nullify *all* state regulation over federally licensed warehouses. The only purpose sought was the reorientation of state versus federal dominancy upon specific matters of control where conflict had existed. Actually the 1931 amendment was passed by both houses without debate, and was recommended by both committees unanimously.[11] The court will recognize as highly improbable the enactment of federal legislation which nullifies extensive state authority in the very serious and complete manner claimed, without discussion, controversy or opposition, especially since the act as originally passed received congressional support largely because of repeated assurances that state regulation was being preserved. (See *supra* p. 31-2)

Section 29 as amended now reads:

> "That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

This section cannot be distorted to nullify all state regulation over federally licensed warehousemen.

---

[11] 72 Cong. Rec. Pt. 8 p. 8530; 72 Cong. Rec. Pt. 8 p. 8529; 74 Cong. Rec. Pt. 6 p. 6138; S. Rept. No. 1775 to 71 Cong. 3rd Sess.; H. Rept. 4 to 71st Cong. 1st Sess.

First, the opening phrase of the section expressly provides that the secretary may cooperate with state officials charged with the enforcement of state warehouse laws. By this provision recognition is given to the continued existence of state laws which would operate upon federally licensed warehousemen, and thus provide an opportunity for cooperation. This plain language negatives any alleged congressional intent to preempt the entire field and exclude the states. A similar preservation of state authority is made in Sections 18 and 20 of the act.

Second, the reference to the exclusive power and authority of the secretary is limited to the authority "conferred * * * under this Act". In other words, specific matters of control which have been delegated to the secretary are dominant in case of conflict with state authority. But this language cannot be expanded to grant the secretary exclusive regulatory power over all phases of warehousing operations and all manner of regulatory problems, even though the power was not delegated to the secretary and is beyond the authority which he can exercise. This clause was given its limited and obvious meaning in *U. S.* v. *Hastings*, 296 U. S. 188, 199 (1935). The question involved was the sufficiency of an indictment under Section 30, charging the theft of cotton from a federally licensed warehouse for which a receipt had been issued. The indictment failed to allege that the cotton was being stored "for interstate commerce," and upon demurrer the court held the act inapplicable and said with respect to amended Section 29:

> "While the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act, * * *."

According to the *Hastings* decision, the secretary's exclusive jurisdiction occurs only with respect to expressly dele-

gated powers and authority, but as to matters concerning which the secretary has no authority, the state's functions are left unaffected.

The Circuit Court of Appeals concluded that the *Hastings* case was not applicable since it dealt only with the absence of the secretary's authority with respect to intrastate commerce.[12] But the court's reasoning is equally applicable to the disputed areas of regulation here involved, over which the secretary likewise lacks authority.[13]

---

[12]Under the *Hastings* case the United States Warehouse Act has no application to grain stored for intrastate commerce. The warehousemen by affidavit admit that a substantial portion of the grain they handle both originates at and is destined to points in Illinois. For example:

> Continental Grain—88% of all corn handled originated in Illinois and 21% shipped to Illinois points (R. 69).
>
> Stratton Grain—17.7% of all grain handled was wholly intrastate (R. 65).
>
> Norris Grain originated 38% of its stored grain in Illinois and shipped 15% to Illinois points (R. 67).
>
> Cargill—15% of all grain handled was intrastate (R. 74).

Hence as to this intrastate storage the federal act can have no application even in a limited manner. With respect to intrastate storage state regulation must be evident. Yet, the court below rejected even this undeniable basis for continued state control.

[13]Of interest is the reference by the Circuit Court of Appeals (and the respondents) to the case of *Independent Gin & Whse. Co.* v. *Dunwoody*, 40 F. (2d) 1 (C.C.A. 5th 1930) and the significance attached to the alleged timing of the 1931 amendment as being "shortly thereafter". (R. 113) The *Dunwoody* case sustained a state license fee upon an already licensed federal warehouse. The decision was rendered April 21, 1930, but the amendment to Section 29 had been proposed in Congress years prior and had actually passed the House in 1929. The House Committee report (H. Rept. No. 4, 71st Cong., 1st Sess., p. 5) states:

> "The present legislation * * * was introduced in the seventieth session of Congress at the request of the Department of Agriculture, favorably reported by the committee, and passed by the House on February 25, 1929."

Third, the 1931 amendment did not confer any additional jurisdiction and authority upon the secretary. The general provisions of the act remained as they had been since 1916. The secretary's jurisdiction was not broadened one whit. The act was still a warehouse receipt act, and the power and authority that was made "exclusive" was the limited and circumscribed power that had previously existed and been exercised. If Congress had intended to invalidate *all* state warehousing regulations in 41 states, it would certainly have said so manifestly and expressly, and would have broadened federal regulation to continue existing protective features of the state systems.

The court below referred to the 1931 amendment of Section 6 of the United States Warehouse Act as demonstrating an intent to relieve federally licensed warehouses from state laws. That section dealt with the bonding requirement and the amendment eliminated the provision causing bonds to secure the faithful performance of obligations under state as well as federal laws. But, as revealed in the Senate Committee report, this action was taken in contemplation of the fact that state laws, to which these licensed warehouses would be subject, would continue in effect and might exhaust the bond to take care of claims under state law. The Senate Committee said:[14]

> "The next amendment eliminates from section 6 of the present act the clause which provides that the bond shall secure the faithful performance of the warehouseman's obligations as defined by State laws. *Since the act does not give the department jurisdiction to enforce State laws, it is obviously unfair that a bond should be exacted of a warehouseman to satisfy State laws.* Such a requirement subjects the bond to greater exposure of liability and naturally such increased exposure is reflected in the rates charged for bond premiums. More-

[14] S. Rept. No. 1775, 71st Cong., 3rd Sess., p. 2.

over, if the bond is available under State acts this may result in taking away from Federal receipts some of the very best security that the Federal act contemplates shall be available for their protection. Again this amendment to section 6 naturally follows the amendment suggested to section 29."

Congress could have exempted federally licensed warehouses from all state laws. Instead, it chose to recognize the continued application of state laws upon such warehouses, but for the reasons stated limited the liability under the federal bond.

Three other matters referred to by the Circuit Court of Appeals as being of some significance in determining the supersedure issue require our attention:

In connection with the 1931 amendment to the United States Warehouse Act, the court below attaches significance to the footnote references to the federal act contained in *Cloverleaf Butter* v. *Patterson*, 315 U.S. 148 (1942). The court below said (R. 115-6):

> "In this connection it is pertinent and of some importance to note that in *Cloverleaf Butter Co.* v. *Patterson, supra,* the court (page 155), cites in footnote 5 *Merchants Exchange* v. *Missouri,* 248 U.S. 365, 368, as one of the cases holding that the state was free to legislate upon matters left unregulated by the nation. True, the court in the *Merchants* case referred to § 29 of the Warehouse Act as manifesting the purpose of Congress not to supersede state laws. This reference, however, was made prior to the time § 29 was amended in 1931. More significant is that the court in the *Cloverleaf* case in footnote 6 (page 156) cites § 29 as an instance where Congress had specifically exercised its power of legislation so as to conflict with the regulation of the state, and that the federal legislation became exclusive in its application. The footnote reference was to § 29 as amended in

> 1931. Thus we have the court in the same opinion treating § 29 before it was amended as an illustration of dual authority and § 29 after it was amended as providing for sole authority in the federal government."

But this court said the following in the *Cloverleaf* decision (pp. 155-6):

> "It has long been recognized that in those fields of commerce where national uniformity is not essential, either the state or federal government may act. * * * Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation.[5] But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically[6] or by implication,[7] the state legislation becomes inoperative and the federal legislation exclusive in its application."

Clearly the court, in footnote 6, referred to the amended United States Warehouse Act as providing specifically for federal authority to the exclusion of similar state action *but only in the field specifically covered and when "conflict" exists*. This follows from the amendment of the federal act providing that federal "power, jurisdiction and authority conferred * * * under this Act shall be exclusive." The superseding effect of the federal act is restricted to its own narrow limits as we have demonstrated above.

Secondly, the court below erroneously stated that the South Dakota court in *In re Farmers Cooperative Ass'n.*, 8 N.W. (2d) 557 (1943) "considered the precise issue presented here", and presumably decided in favor of complete state supersedure. In that case the state required a federal licensee to secure a state license, as a condition to continu-

ing in business. The only issue presented was the necessity of *two licenses.* Whether the United States Warehouse Act precludes the state from regulating rates, services, practices and financing was not discussed or involved.

In the South Dakota case it was held that the state versus federal licensing requirements involved a head-on collision, and, therefore, "federal control displaces state control". But this assumed that there was federal control of the precise subject matter of the regulation at issue—in that instance, licensing. Furthermore, the statute involved was the South Dakota equivalent of the Illinois Grain Warehouse Act. It was in no respects a comprehensive public utility regulatory system, such as is provided in the Illinois Public Utilities Act. We believe the South Dakota decision is not sound, even with respect to the narrow ground upon which it is based, since the federal license is not required, but is merely permissive or voluntary, while the state actually requires a license before local warehousing services may be conducted. In any event, if the decision were expanded to support complete supersedure of all state control over federally licensed warehouses, it would conflict with this court's holding in the *Hastings* case, and do violence to the plain language of the United States Warehouse Act.

Finally, the Circuit Court of Appeals referred to Section 5(a)(7) of the Commodity Exchange Act as of "some significance". (That section is set forth in Appendix A page 80.) That federal statute deals with futures trading and with contract markets where such trading is permitted, and not with warehouse regulation. Section 5(a)(7) compels contract markets to require that federal receipts shall be accepted in satisfaction of futures contracts "without discrimination" and despite the fact that the issuing warehouseman is not also licensed under state laws. The pur-

pose of the section was to eliminate discriminations against federally licensed warehouses. The Senate floor manager of the bill, in proposing Section 5(a)(7), stated:

> "The sole purpose of the proposed amendment is to eliminate arbitrary and unfair discrimination against warehousemen licensed under the Federal Warehouse Act who desire their receipts to be made tenderable on future contracts and to give the advantages of additional warehouse facilities to traders in the market." (80 Cong. Rec. 6834, 74th Cong., 2nd Sess., April 4, 1936)

This section deals with a special problem existing on futures markets. It does not supersede even state license requirements, but merely requires a contract market to recognize as tenderable on futures contracts a receipt issued by a federal licensee. The section does not bear upon or affect state regulation over rates, service, practices and financing. Both federal and state houses continue to be subject to all rules of the contract markets and to all applicable state laws, so long as such rules and laws are applied "without discrimination".

F. Federal Trade Commission 1937 report and recommendations to Congress.

In 1935, some years after the 1931 amendments to the United States Warehouse Act, the Federal Trade Commission, pursuant to Public Resolution No. 61 of the Seventy-fourth Congress, investigated the gr in trade and submitted a comprehensive three-volume report to Congress entitled "Agricultural Income Inquiry" (1937). This report, in part, contained the following recommendations with respect to public grain warehousing (pp. 40-1):

> "• • • Commission is of the opinion that Federal legislation should be adopted providing for the following things:

"1. That all deliveries of grain on futures contracts shall be made from public warehouses:

"(a) Licensed by Federal authority.

"(b) Subject to Federal regulation.

"(c) Not owned, operated, or controlled, directly or indirectly, by any person, firm, or any other organization directly or indirectly dealing in grain. * * *

"3. That the storage charges for grain in public warehouses from which grain is deliverable on futures contracts as aforesaid shall be regulated by the Federal authority."

The Federal Trade Commission was thus of the opinion that the permissive warehouse license for warehouses used for delivery on futures markets should be made mandatory; that real regulation rather than the existing limited negative control should be provided; and that storage charges should be regulated and determined on the federal level. These recommendations constitute a considered opinion by an important federal agency that federal regulation does not exist, despite the 1931 amendments to the United States Warehouse Act. Congress was requested to legislate federal regulation, but has thus far refused to act.

G. Conclusions on the United States Warehouse Act.

Numerous factors or circumstances exist in the instant case which militate against the existence of a congressional intent to preempt the field of regulation of federal warehouses and exclude the states. These factors must lead the court to reject the warehousemen's attempt to nullify and annihilate state authority.

1. The United States Warehouse Act by its terms and provisions provides only limited and circumscribed control. It has been characterized as providing only a "measure of control".

2. The federal act emphasizes its limited objectives by making the acquisition of a license permissive or voluntary. No license is *required* even of a wholly interstate house.

3. The federal act does not delegate affirmative regulatory powers and is devoid of the normal and fundamental authorities contained in a regulatory statute. No mandatory orders and directives redressing abuses can be issued by the secretary.

4. Cooperation and collaboration with state agencies is expressly contemplated.

5. The field of regulation involved is one of local interest and concern, traditionally the subject of the reserve powers of the state.

6. State regulation in the field has been long established and is now being exercised by 41 states.

7. Congress has left no doubt of its desire to strengthen state control, and not nullify and lose for the public and the farmers the benefits of state regulation.

8. Congress has been asked to provide actual federal regulation but has not acted.

Under the principles established by this court concerning supersedure questions, the congressional intent to exclude state regulation should be "clearly manifested", not constructed out of far-fetched implications. The search should be for means of reconciling the state and federal systems, and not for the discovery of remotely possible and highly speculative conflicts. The United States Warehouse Act does not supply the character of federal legislative support necessary to the invalidation of state authority. It has not been clearly and positively demonstrated that Congress has legislated on the precise subject matters of regulation here involved, nor is there an irreconcilable conflict between state and federal authority or a plain and palpable infringement of federal policy.

III

THE MAJOR STATE REGULATORY ISSUES INVOKED

No case exists in which the United States Warehouse Act was used to invalidate state regulation of rates, service, discriminatory practices, security issues, or financial arrangements of federally licensed warehousemen. We claim and we shall here establish that as to each of the major issues of regulation presented by the Rice complaint, federal authority is completely silent. The secretary, in other words, is without the power to grant any of the relief sought or to correct any of the abuses charged.

In contrast, very specific state statutory provisions exist dealing with the precise phases of regulation involved and providing very adequate means of affirmative correction and redress of warehousing abuses. In this connection, our references will be solely to the Illinois Public Utilities Act, passed in 1913 and reenacted in 1921.[15] There is another state statute, the Illinois Grain Warehouse Act, enacted in 1871, which is similar to the United States Warehouse Act. It is significant that in the face of the Illinois Grain Warehouse Act, the Illinois legislature found it necessary to pass a second statute imposing utility regulation upon public grain warehousemen. The legislature must be presumed to have performed a useful act—and not merely to have duplicated an existing statute. Obviously, therefore, the control provided by the Illinois and federal warehouse acts is entirely different from the affirmative utility regulation expressed in the Illinois Public Utilities Act.

It is our position that all of the major issues of regulation raised in the Rice complaint are properly and validly re-

[15] Ill. Rev. Stat. 1945, Ch. 111⅔, Secs. 1-84. (Secs. 1-80 in pamphlet copy.)

served to the states. We are not here seeking "dual regulation". We are invoking the only regulatory system that now exists, Congress having remained completely silent upon the regulatory matters involved.

A. Enforce state provisions requiring prior commission approval of: (1) Contracts and arrangements with affiliates and other utilities; (2) sales, leases and encumbrances of utility properties or assets; (3) security issues.

Regulatory control has been expressly delegated to the Illinois Commission to deal with numerous financial problems of public warehouses and thus protect the public interest by the following sections of the Illinois Public Utilities Act:

Section 8a provides that no management, construction, engineering, supply, financial service or similar contract or arrangement between a public utility and an affiliated interest shall be effective unless the Commission's consent thereto is first secured.

Sections 20-26 provide for the Commission's prior approval before public utility securities maturing in over one year are issued and delegates to the Commission regulatory control over mergers, consolidations and reorganizations of public utilities.

Section 27, in part, requires prior Commission approval before two utilities may enter into operating arrangements; before a utility may transfer, lease, mortgage or sell necessary public utility property; before a utility may purchase securities of other utilities; before guaranteeing obligations of any other person or corporation; before appropriating or diverting funds to an enterprise not directly connected with the utility's business.

Such regulation has for its purpose the prevention of unwarranted drains on utility funds or the creation of onerous financial structures which would exert financial pressure upon the utility and thus affect its ability to render adequate service at reasonable rates. The warehousemen concede that no comparable authority is contained in the United States Warehouse Act.

The Circuit Court of Appeals, while recognizing this fact, held state regulation to be superseded in the following words (R. 122):

> "While we find nothing in the Act which expressly relates to such matters, we think, for the reasons already stated, that the Secretary has implied authority to deal therewith."

State authority is thus erroneously nullified, although federal regulation is completely absent and no possibility of conflict exists.

B. Fix and determine just and reasonable rates.

The warehousemen concede that Congress has not delegated authority to the secretary to establish and determine rates.[16] The Circuit Court of Appeals infers, however, that such authority has been delegated, by saying (R. 119):

> "We suppose that the essential function of a rate making body is to determine rates which will be fair both to the utility and to the public, and it appears plain

---

[16]Counsel for the warehousemen contended before the Circuit Court of Appeals:

"Even though the Secretary of Agriculture may not have been specifically granted rate making powers, nevertheless State authorities are precluded from acting in this field." (Br. 19)

"The warehousemen make no claim that the Secretary of Agriculture has the power under the United States Warehouse Act to initiate, establish, and determine a rate." (Br. 42)

that the Secretary is vested with the authority to accomplish such purpose."

The federal act is devoid of any language even remotely delegating rate making powers. The importance of the function and the traditional language used for such delegations over a period of many years prevents the inference of such powers where not specifically and expressly provided.

An excellent discussion of this subject is set forth in the case of *Interstate Commerce Comm.* v. *Cincinnati etc. R. Co.*, 167 U. S. 479 (1897). In that case, the authority of the Interstate Commerce Commission to establish just and reasonable transportation rates was disputed. The federal act as it then stood required all charges to be just and reasonable; prohibited unjust and unreasonable charges; prohibited unreasonable rates and practices; made specific provision for the preparation of rate schedules and required that they be filed with the Commission and published; and authorized the Interstate Commission to "execute the provisions of this act". Despite all of this, it was decided that the commission had not been delegated the power to fix and establish rates. In summarizing its opinion, the court said (pp. 505-6):

> "Second. That Congress has transferred such a power [to fix rates] to any administrative body is not to be presumed or implied from any doubtful and uncertain language. The words and phrases efficacious to make such a delegation of power are well understood and have been frequently used, and if Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconstruction, but clear and direct. Third. Incorporating into a statute the common-law obligation resting upon the carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the act, does not by implication carry to the Com-

> mission or invest it with the power to exercise the legislative function of prescribing rates which shall control in the future. Fourth. * * * The grant to the Commission of the power to prescribe the form of the schedules, and to direct the place and manner of publication of joint rates, thus specifying the scope and limit of its functions in this respect, strengthens the conclusion that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the Commission."

The careful language later worked out by Congress in the Hepburn Act in 1906 became a model employed by state legislatures and by future Congresses when delegating rate-making powers. So it was that in the Packers and Stockyards Act of 1921, when Congress decided to delegate rate-making powers to the Secretary of Agriculture, clear and specific language was used, coupled with a series of provisions to implement that power. (Tit. 7 U.S.C., Secs. 206-12) Under these provisions, the secretary in hundreds of cases has conducted rate hearings and established rates. The corresponding lack of such power in the same secretary to fix and determine grain warehouse rates is apparent. In the United States Warehouse Act no delegation of rate-making authority occurs, nor was such delegation intended; and it has not been shown that in the thirty years since 1916, the secretary (the same official who has been so active in rate-making as administrator of the Packers and Stockyards Act) has in a single instance sought to establish rates for federally licensed warehouses or sought to criticize or dispute the rates the warehousemen provided. The detailed and positive rate-making power in the Illinois Commission which is here sought to be nullified may be briefly summarized as follows:

> Section 32 requires that all rates or other charges made, demanded or received for any service rendered,

shall be just and reasonable. Unjust and unreasonable charges are prohibited and declared unlawful.

Section 33 requires every public utility to file with the commission a schedule showing all rates, charges and classifications of rates in force, including all rules, regulations, privileges and contracts in any manner affecting such rates.

Section 34 requires schedules to be printed, published and posted in the manner prescribed by the commission.

Section 35 prohibits any service from being undertaken unless schedules of rates are filed and published.

Section 36 prohibits any change in rates without commission approval, and sets up machinery for securing such approval and the conduct of hearings.

Section 41 then grants the commission precise and detailed power and authority to fix and determine just and reasonable rates and charges in the following language:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, contracts, or practices, or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provisions of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided."

To implement the above explicit grant of rate-making authority, the following collateral powers are delegated:

> Sections 11 to 13 authorize the Illinois Commission to establish a uniform system of accounts and to prescribe the manner in which such accounts shall be kept.
>
> Section 14 authorizes the fixing of proper and adequate depreciation rates.
>
> Section 19 provides for annual reports to the commission.
>
> Section 30 authorizes the Illinois Commission to ascertain the value of public utility property.

In addition to the aforementioned affirmative regulatory powers, the Illinois statute contains many procedural sections which serve to make regulation effective and at the same time provide safeguards of fair play and due process.

> Sections 64 to 69[17] provide for the conduct of hearings and investigations, administration of oaths, issuance of subpoenas and the immunity of witnesses. After hearings, provision is made for the entry of orders based upon and supported by findings of fact.
>
> Sections 70 to 75 provide for service of orders, rehearings, modifications of orders, and judicial review.
>
> Section 76 provides for reparation awards when excessive or unjustly discriminatory rates are charged.
>
> Sections 77 to 84 provide for the enforcement of provisions of the statutes by mandamus or injunction proceedings, or the assessment and recovery of penalties by the commission, or cancellation of licenses.

It is urged that this elaborate and comprehensive state regulatory system with respect to rate-making be invali-

[17] The sections of the Illinois Public Utilities Act referred to in this and the succeeding three paragraphs appear in the pamphlet edition furnished to the court as sections 60-65; 66-71; 72; and 73-80, respectively. In this instance only is there any variance between the section numbers of the Revised Statute and the pamphlet copy.

dated as in conflict with Section 25 of the United States Warehouse Act and regulations issued thereunder. That section provides that:

> "The Secretary * * * may, after opportunity for hearing * * * suspend or revoke any license to any warehouseman * * * for any violation of or failure to comply with any provisions of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered."

The regulations require the licensed warehouseman to file a copy of his rates and proposed changes with the department, and to post his current rates in his principal office. (Reg. 5, Sec. 3)

There is no statutory requirement that rates be filed, or statutory prohibition against charging a lesser or a greater rate than that filed, or statutory requirement that prior notice be given before changes are made. Neither the federal act nor regulations thereunder in any way prevent a licensed warehouseman from filing any form or type of rate as long as it is not exorbitant.

The acceptance of a rate schedule for filing by the secretary does not constitute approval of such rates or establish their reasonableness. *Interstate Commerce Comm. v. Cincinnati, etc. R. Co.*, 167 U. S. 479 (1897); *Cleveland v. Hope Natural Gas Co.*, 44 P.U.R. (n.s.) 1, 33 (F.P.C. 1942). No conflict with the existing positive state rate-making powers exists. The secretary may revoke a license because an exorbitant rate was charged in the past. The secretary cannot determine and prescribe what will constitute a reasonable rate for the future. In fact, the secretary is entirely without any affirmative powers. He is not authorized to issue any order or directive under any circumstances, except that he may revoke a voluntary license. He has no

"veto power". If a license is revoked, the warehouseman is still free, so far as federal authority is concerned, to conduct his business and charge whatever rate he chooses. No federal penalties are provided. The secretary can only take back his voluntary and permissive license.

But what if the state, acting pursuant to the Rice complaint, reduced storage rates? The federal regulation—not the statute—requires storage rates and changes therein to be filed. There is no conflict. The warehousemen can freely comply with the federal regulation by performing the purely ministerial function of filing the newly prescribed rate with both the federal and state agencies. The secretary has no function to perform except to receive the rates and file them. Full compliance with both controls may thus be readily achieved.

It is unreasonable to assume, as the Circuit Court of Appeals does (R. 119), that the Illinois Commission might "determine a rate higher than that determined by the Secretary to be not unreasonable or exorbitant". This assumed condition could arise only where the Illinois Commission prescribed an exact rate and thereafter the secretary, in a license revocation proceeding, found the prescribed rate to be exorbitant. The prospect of such a series of events occurring is highly unlikely and improbable. Conflict is sought to be constructed on the basis of remote and speculative possibilities.

The prayer in this proceeding is for a reduced rate. Respondents are contesting state jurisdiction here, not because they fear the state will order them to charge higher rates, but because they anticipate that a lower level of rates will be prescribed. The Illinois Commission is under a statutory duty to fix "just and reasonable" rates, and it must be presumed that the commission will validly perform its functions and will not prescribe exorbitant rates.

The assumption of the Circuit Court of Appeals contemplates that the state, with its elaborate statutory machinery and expert utility regulatory staff, would not fix just and reasonable rates; moreover, it assumes that the secretary would do so, even though he has never regulated rates, and is neither equipped nor authorized by statute to perform such a function.

We have alleged and are prepared to show frequent departures from filed rates, issuance of rebates and consummation of special deals. Respondents have failed to show that the secretary in all his tenure under the United States Warehouse Act has, in a single instance, even faintly questioned a charge on the ground of its being exorbitant, unreasonable or discriminatory.

Since the absence of federal power to fix, establish or determine warehouse rates is conceded, and since state rate-making powers do not conflict with the provisions or objectives of the United States Warehouse Act, it is clear that the state authority is permissible and valid, and should not be nullified.

C. Enforce the state constitutional provision against occupying the dual and conflicting positions of public grain warehouseman and, at the same time, grain dealer.

Public warehousemen, when in competition with their storage customers, have practiced innumerable forms of discrimination and self-preference. In Illinois a separate article was written into the state constitution dealing solely with public warehouses. These provisions were interpreted in *Hannah* v. *People*, 198 Ill. 77, 64 N.E. 776 (1902) as prohibiting the vice of a quasi-public institution acting in a dual and conflicting capacity with its customers. The prohibition was imposed to protect the interests of farm-

ers, grain receivers and shippers. We have sought to have the Illinois Commission enforce this wise policy.

Respondents urge that federally licensed warehousemen are authorized to deal in grain by Section 18(i) of the federal act, and therefore the state prohibition has been superseded. Section 18 specifies information which warehouse receipts must contain. Subparagraph (i) provides:

> "That every receipt issued • • • under this Act shall embody within its written or printed terms • • •
>
> "(i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; • • •."

This provision contains no prohibition against warehousemen dealing in their own grain, but neither does it authorize or approve such practice. It would appear that the fact of ownership of grain by warehousemen was considered a *suspicious circumstance*, or of such a doubtful character as to necessitate its disclosure on the receipt for the protection of the receipt holder.

No direct and positive federal approval exists to raise an irreconcilable conflict with the state prohibition.

In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933), the court considered the Grain Futures Act which sanctioned futures trading by setting up specific requirements under which such trading could be conducted. The state of Missouri, however, declared illegal certain grain futures transactions. This state prohibition was upheld in the face of claimed supersession by federal law.

Similarly, in *Minnesota ex rel Whipple* v. *Martinson*, 256 U. S. 41 (1921), the Federal Anti-Narcotics Act expressly permitted physicians personally to dispense drugs to any person, provided records were kept. The state law pro-

hibited a physician from furnishing drugs to habitual users out of his own stocks. The state prohibition was upheld as not creating a substantial conflict with the federal enactment.

The United States Warehouse Act does not sanction what the state prohibits even to the extent involved in the above cases. The state prohibition against duality of capacity is not in conflict with any federal requirement.

The Circuit Court of Appeals was influenced in its decision on this point by the belief that:

> "To sustain defendants' contention on this point would immediately invalidate receipts of the value of millions of dollars." (R. 120)

The relief sought from the Illinois Commission is an order against public warehousemen prohibiting them from thereafter dealing in grain. The order could only act prospectively, and then only upon the warehousemen themselves and not the receipt holders. Past violations could not even be punished by the assessment of penalties. Only violations occurring after the entry of a prohibitory order may be punished—but even then, innocent third party receipt-holders would not be affected.

D. Eliminate discriminatory rates and practices.

Discriminatory rates and practices of a serious, unethical and unbusinesslike character are sought to be prevented. The complaint before the Illinois Commission charges that the respondent warehousemen maintain a grossly discriminatory and unwarranted difference in storage rates in favor of the federal government, as against public grain dealers. In addition it is charged that warehousemen in their dual and conflicting position as grain dealers and public warehousemen have been able to effect undue pref-

erences and advantages *for themselves* and in discrimination against public dealers by:

a) mixing grain;

b) manipulating and rebating storage charges;

c) withholding desirable transit tonnage for themselves;

d) utilizing storage space which is preferable from an insurance standpoint;

e) delaying loading of grain in furtherance of their own interests.

The Illinois Commission is fully equipped and legislatively empowered to deal with these issues under the following sections of the Illinois Public Utilities Act:

Section 37—No public utility shall "refund or remit directly or indirectly, in any manner or by any device, any portion of the rates or other charges".

Section 38—

"No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person *or subject any corporation or person to any prejudice or disadvantage.* No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service."

The commission is expressly authorized to eliminate such discriminations by fixing and determining just, reasonable and sufficient rates and practices by the issuance of orders based upon findings of fact after full and complete hearings. (See *supra* pp. 55-7)

The warehousemen rely almost entirely upon Section 13 of the United States Warehouse Act to nullify this express affirmative state regulation. The section reads:

> "That every warehouseman conducting a warehouse licensed under this Act shall *receive* for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him *which may be tendered* to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between *persons desiring to avail themselves of warehouse facilities.*"

Obviously only one federal requirement is imposed, and that is that the warehousemen accept grain for storage if space exists, without discriminating between those who want storage space. The word "receive" is the only word of command, and "discrimination" refers only to an unfair refusal to store grain tendered. All other forms of discrimination are left untouched. The provision has absolutely no relationship to discriminatory rates, nor to the self-preferences realized by warehousemen as against public dealers *after* the latter become customers and storers of grain in such warehouses.

In any event, concededly the secretary is not granted the affirmative authority to eliminate any form of discrimination. He cannot fix and determine rates or practices that are fair and non-discriminatory. No conflict between the two systems exists. The secretary's acquiescence in the existence of discriminatory rates and practices, if he knew of such conditions, does not serve to supersede affirmative state regulation, but emphasizes the lack of authority in the secretary to deal with such matters.

E. Establish safe, proper, adequate and efficient grain warehousing service and facilities.

The Illinois act in Sections 32 and 49, by careful and detailed language delegates specific affirmative authority to the commission to compel the establishment by public utilities, including grain warehousemen, of safe, proper, adequate and efficient services and facilities, and to adjust and augment such services and facilities wherever the public interest requires.

Section 50 authorizes the commission after hearings to direct utilities to make additions, repairs and improvements to promote the security or convenience of employees or the public or to secure adequate service.

It is urged that supersedure results from the terms of Section 3 of the United States Warehouse Act which grant to the secretary the right to determine whether the warehouse for which a voluntary license is sought is "suitable" for the proper storage of agricultural products.

The meaning of the word "suitable" in Section 3 is clarified in Section 4. The secretary is required to ascertain that the warehouse for which a license is issued is "*suitable for the proper storage of the particular agricultural product" for which an application for license is made.* In other words, the secretary, under the federal act, administers warehouses for cotton, grain, tobacco, flaxseed and other agricultural products. He must determine that the particular warehouse is fitted for the storage of grain, rather than the storage of cotton, or for tobacco rather than flaxseed. The federal act does not deal with the adequacy of warehousing service and facilities or the power to require improvements thereof.

A similar issue involving far greater federal power was presented to this court in *Atchison, T. & S. F. R. Co.* v.

Railroad Commission, 283 U.S. 380 (1931). There, the City of Los Angeles sought to compel railroads to construct a union terminal. When proceedings to that effect were initiated before the Interstate Commerce Commission, that body held that it was without authority to *compel* the construction of the terminal. Upon appeal to this court, that position was sustained. Proceedings were then initiated before the state commission, and this court held that the state could not require the construction of the station and the relocation of connecting tracks without the *approval* of the Interstate Commission. The issue was thus stated by the court (p. 390):

> "This court has held that the State Commission could not require the construction of the proposed station, and the relocation of connecting tracks, *without the approval of the Interstate Commerce Commission.* That approval has been given. This court has also decided that the Interstate Commerce Commission has not been empowered to *require* the building of the station."

In other words, a sharp distinction was made between the power of the commission to require or compel the improvement of service through the construction of a union terminal, and the necessity for commission approval before such a terminal project was instituted. It was claimed that the state authority to compel construction was in conflict with, and therefore superseded by, the federal requirement of prior commission approval. This position the court flatly rejected in the following language (pp. 392-3):

> "The considerations which led the court to the conclusion that the power to *compel* the construction of such terminals had been withheld from the Federal Commission also make it clear that the authority which resided in the state had not been taken away except to the extent that the *approval* of the Federal Commission was required. The principle thus applicable

> has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the state of its authority as to matters not covered by the Federal legislation is not to be implied unless the act of Congress fairly interpreted is in conflict with the law of the state."

The distinction between the regulatory authority to approve a facility as against the authority to compel the correction of existing conditions was thus sharply drawn in the *Atchison* case, and is of conclusive applicability to the instant proceeding. No reference is made or can be made to any provision in the United States Warehouse Act which empowers the secretary to compel a licensee to correct or improve or change his services and facilities in the interest of adequacy and safety of service. It is only urged that the existing warehouses have been approved. This limited federal function, even if it exists as claimed, is not in conflict with the affirmative authority granted the state commissions to *order and direct* safe, adequate, proper and improved services.

It is also contended that federal power is found in the authorization to the secretary by Section 3:

> "• • • to prescribe, within the limitations of this Act, the duties of the warehousemen • • • with respect to their care of and responsibility for agricultural products stored therein."

This delegation is clearly limited to further the integrity of warehouse receipts, and not to prescribe standards of service and improvements of facilities.

Sections 23 and 24, cited by the court below, have no bearing upon the instant regulatory problem.

Here again no conflict exists.

F. Prevent unwarranted abandonment of public grain warehouse service and capacity.

The Illinois provision on this subject is clear and unequivocal. The statute reads:

> "§49a. No public utility shall abandon or discontinue any service without first having secured the approval of the Commission. In granting its approval, the Commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. * * *"

An application to the state commission must be made and approval secured before utility services may be abandoned. No state authority exists to compel abandonment. While no federal control on this issue exists, the warehousemen urge that the secretary's power to suspend or revoke a license requires state supersedure. The Circuit Court of Appeals holds that where a federal warehouseman desires to abandon his service, "he could only do so by satisfying the bond and surrendering his license", then "control would revert to the state". (R. 122) In other words, if a warehouse is abandoned, a license is revoked or suspended and then state control takes hold. But the warehouse service is gone—there is nothing and nobody to regulate. The public's interest in the maintenance of adequate public grain warehousing service is irreparably prejudiced.

The federal act contains no provisions comparable to, and certainly none which conflicts with the invoked state authority.

CONCLUSION

We respectfully submit that respondents have completely failed to demonstrate the existence of any federal authority over the precise subjects of regulation invoked before the Illinois Commission. They have shown no actual and positive irreconcilable conflict and repugnance between the state rules and the federal provisions and purpose. Speculative and fancied conflicts will not support the urged supersedure of comprehensive affirmative state regulation in a local field traditionally reserved to the states. The limited and circumscribed control offered by the United States Warehouse Act, which is in the nature of a warehouse receipt act, and under which the acquisition of a license is permissive and voluntary, is not a substitute for affirmative regulatory action. The secretary is without authority to grant any of the relief sought before the Illinois Commission. *There is no question of exposure to dual regulation or penalties.*

To nullify state statutory and constitutional provisions under such circumstances would be to grant the warehousemen complete immunity and freedom from effective regulation, to the distinct detriment of the public. Congress could not have intended to nullify state legislation affecting matters of the public welfare without providing definite federal regulation in lieu thereof. The invalidation of state regulatory authority in this case would not serve to transfer that authority to the federal government.

As this court said in *Penn Dairies* v. *Milk Control Com.*, 318 U. S. 261, 275 (1943):

> "* * * we should be slow to strike down legislation which the state concededly had power to enact, because of its asserted burden on the federal government. For the state is powerless to remove the ill effects of our decision, while the national government, which has the ultimate power, remains free to remove the burden."

The order of the District Court properly denied injunctive relief, and should be sustained, and the order of the Circuit Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

January 6, 1947.

APPENDIX A.

UNITED STATES WAREHOUSE ACT.

[39 United States Statutes at Large, page 486, as amended July 25, 1919, February 23, 1923, and March 2, 1931.]

That this Act shall be known by the short title of "United States warehouse Act."

SEC. 2. That the term "warehouse" as used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt.

SEC. 3. That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein.

SEC. 4. That the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or

warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided,* That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 5. That each license issued under Sections 4 and 9 of this Act shall terminate as therein provided, or in accordance with the terms of this Act and the regulations thereunder, and may from time to time be modified or extended by a written instrument.

SEC. 6. That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States to secure the faithful performance of his obligations as a warehouseman under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, and may, in the discretion of the Secretary of Agriculture, include the requirements of fire and/or other insurance. Whenever the Secretary of Agriculture, or his designated representative, shall determine that a previously approved bond is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

SEC. 7. That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Sections 6 or 9, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

SEC. 8. That upon the filing with and approval by the Secretary of Agriculture, or his designated representative, of a bond,

in compliance with this Act, for the conduct of a warehouse, such warehouse may be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded shall be used until a bond, such as provided for in Section 6, has been filed with and approved by the Secretary of Agriculture, or his designated representative, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked.

SEC. 9. That the Secretary of Agriculture, or his designated representative, may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products, and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act, and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act, and such rules and regulations, to the same extent as is provided for warehousemen licensed hereunder.

SEC. 10. That the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and for each license issued to a warehouseman or to any person to classify, inspect, grade, sample, and/or weigh agricultural products stored or to be stored under the provisions of this Act, the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts.

SEC. 11. That the Secretary of Agriculture, or his designated representative, may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample, or classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to condition, grade, or otherwise and to certificate the condition, grade, or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample, or classify and weigh

the same and to certificate the condition, grade, or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him.

SEC. 12. That any license issued to any person to inspect, sample, or classify, or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture, or his designated representative, whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify, or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatever. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

SEC. 14. That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 15. That any fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act.

SEC. 16. That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the

agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades.

SEC. 17. That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

SEC. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with

others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided,* That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided,* That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: *Provided, however,* The Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

SEC. 19. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined: *Provided,* That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate.

SEC. 20. That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided,* That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act.

SEC. 21. That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipts; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman.

SEC. 22. That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued.

SEC. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder.

SEC. 24. That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings.

SEC. 25. That the Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 26. That the Secretary of Agriculture from time to time may publish the results of any investigations made under Section 3 of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor.

SEC. 27. That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto.

SEC. 28. That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the effcient execution of the provisions of this Act.

SEC. 29. That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This Act shall not be construed so as to limit the operation of any statute of the United States relating to warehouses or to warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

SEC. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this Act, or who shall violate or fail to comply with any provision of Section 8 of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the prod-

ucts involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade, or weigh fraudulently, any agricultural product stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court.

SEC. 31. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the moneys appropriated by this Act to pay the salaries and expenses thereof.

SEC. 32. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 33. That the right to amend, alter, or repeal this Act is hereby expressly reserved.

COMMODITY EXCHANGE ACT.

Section 5(a)(7) (49 Stat. 1491).

"Each contract market shall—

* * *

"require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

APPENDIX B.

List of States which Provide Warehouse Regulation.

State	Statute	Type of Warehouse	Rate Regulation
Alabama	Code (1940) Title 2 Secs. 568 et seq.	Cotton and other articles of value.	
Arizona	Code (1939) Secs. 52-901 to 52-905	Cotton, wool.	
Arkansas	Dig. Stat. (Pope, 1937) Secs. 14374 et seq.	Grain and others.	x
California	Gen. Laws (Deering 1937) Act No. 6386, Secs. 1 et seq.	Grain and others.	x
Delaware	Rev. Code (1935) Secs. 831 et seq.	Food.	
Georgia	Code (1933) Secs. 5-301 et seq. 93-317; 111-1 et seq.	Grain, cotton and others.	x
Idaho	Code Ann. (1932) Secs. 59-301; 67-202 et seq.	Grain and others.	x
Illinois	Ill. Rev. Stat. (1945) Ch. 111⅔, Sec. 10; Secs. 119 et seq.; Ch. 114, Sec. 189 et seq.	Grain, food, personal property.	x
Indiana	Stat. Ann. (Burns, 1933) Secs. 67-201 et seq.; 67-512	Grain and others.	x
Iowa	Code (1946), Ch. 543.1 et seq.	Grain and others.	x
Kansas	Gen. Stat. Ann. (1935) Secs. 34-101, 223 et seq.	Grain and others.	x
Kentucky	Rev. Stat. (1944), Secs. 248.010 et seq.; 251.010 et seq.; 359.140.	Grain, tobacco	x
Louisiana	Gen. Stat. (Dart's, 1939) Secs. 9855 et seq.; 9934 et seq.	Grain and others.	x
Maine	Rev. Stat. (1944), Ch. 40, Sec. 15, et seq.	Grain and others.	x
Maryland	Code. Ann. (Flack, 1939) Art. 43, Sec. 221; Art. 48, Secs. 42, et seq.	Food and tobacco.	
Massachusetts	Ann. Laws (1933), Ch. 105, Secs. 1, et seq.	Goods, wares and merchandise.	
Michigan	Stat. Ann. (1937), Secs. 19.491 et seq.	Grain and others.	
Minnesota	Stat. (1941) Secs. 231.01 et seq.; 232.01 et seq.; 233.01 et seq.	Grain and others.	x
Missouri	Rev. Stat. Ann. (1944), Secs. 14685.24; 15476 et seq.	Grain and others.	x
Montana	Rev. Code (1935), Secs. 3579, 3585 et seq.	Grain and others.	x

State	Statute	Type of Warehouse	Rate Regulation
Nebraska	Rev. Stat. (1943), Secs. 88-201 et seq.	Grain and others.	x
Nevada	Comp. Laws (1929), Secs. 6106 et seq.	Grain and others.	x
New Hampshire	Rev. Laws (1942), Ch. 205, Secs. 1 et seq.	Goods, wares and merchandise.	
New Jersey	Stat. Ann. Secs. 24:9-1 et seq.	Food.	
New Mexico	Stat. Ann. (1941), 53-901 et seq.	Grain and others.	
New York	Laws of N. Y. (Thompson, 1939) Gen. Bus. Laws, Sec. 396, Agri. & M., Sec. 230(2).	Grain in cities of over 100,000 and others.	x
North Carolina	Gen. Stat. (1943) Secs. 106-430 et seq.; 106-452 et seq.	Cotton, leaf tobacco.	x
North Dakota	Rev. Code (1943), Ch. 60-02 et seq.	Grain and others.	x
Ohio	Gen. Code Ann. (Page, 1937) Secs. 1155-7, 6041.	Tobacco, food.	
Oklahoma	Stat. Ann. Tit. 81 Secs. 1 et seq.	Grain and others.	x
Oregon	Comp. Laws (1940) Secs. 60-302 et seq.	Grain and others.	x
Pennsylvania	Pa. Stat. (Purdon, 1936) Tit. 31, Sec. 952.	Food.	
South Carolina	Code of Laws (1942), Secs. 6466 et seq., 7197	Cotton, tobacco.	x
South Dakota	Code (1939) Secs. 52.0201, 60.0304 et seq., Law (1945) Ch. 345, Sec. 1.	Grain and others.	x
Tennessee	Code Ann. (Williams, 1934) Secs. 6476, 6498.	Tobacco.	x
Texas	Stat. (Vernon, 1936), Arts. 5568, 5601.	Grain and others.	x
Utah	Code Ann. (1943), Titles 76-2-1, 76-3-1.	Grain and others.	x
Virginia	Code (1942), Ch. 51A, Sec. 1228(b); Ch. 58, Sec. 1348 et seq.	Food and tobacco.	x
Washington	Rev. Stat. Ann. (Remington, 1933), Secs. 6987 et seq.; 11569 et seq.	Grain and others.	x
Wisconsin	Stat. (1945), Secs. 100.13, 126.06, 126.18.	Grain and others.	x
Wyoming	Rev. Stat. (1931), Secs. 5-602 et seq.; Supp. (1940), Sec. 5-1307; Laws (1943), Ch. 12, Secs. 1, 7.	Grain and others.	x
	Totals	41	30

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 12 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP.

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

February 12, 1947.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 4004.

INDEX

	PAGE
Introductory Statement	1
I. Principles of supersedure presented in our original brief are not denied	2
II. The United States Warehouse Act is limited and circumscribed in its provisions, scope and purpose	8
III. The 1931 amendment deals only with the limited supervisory control of the United States Warehouse Act as originally enacted. It was not intended to supersede state utility regulation not provided in the federal act	20
IV. The major state regulatory issues involved	25
A. State financial regulation of (1) contracts and arrangements with affiliates and other utilities; (2) sales, leases and encumbrances of utility property and assets; and (3) security issues, has not been superseded	26
B. The power of the Illinois Commission to fix and determine just and reasonable rates has not been superseded	28
C. The state constitutional prohibition against public warehousemen engaging in the conflicting function of grain merchandiser and dealer is not superseded	40
D. Only state laws can deal with the discriminations and self-preferences practiced by public warehousemen. Such regulation has not been superseded	43
E. Only the state has the regulatory power to order the establishment of safe and adequate public warehousing service and facilities, or improvements and additions to such service and facilities. No supersedure of this authority has occurred	49
F. The state authority to pass upon the abandonment of public warehousing service has not been superseded	51
Conclusion	52

TABLE OF CASES CITED

	PAGE
Anderson National Bank v. Luckett, 321 U. S. 233 (1944)	19
Atchison T. & S. F. R. Co. v. Railroad Commission, 283 U. S. 380 (1931)	49, 50
Atlantic Coast Line v. Georgia, 234 U. S. 280 (1914)	7
Banton v. Belt Line Ry. Co., 268 U. S. 413 (1925)	32
C. & N. W. R. Co. v. Fuller, 84 U. S. 560 (1873)	37
Central Elevator Co. v. People, 174 Ill. 203, 51 N. E. 254 (1898)	40-1, 45
Charleston & W. C. Ry. Co. v. Varnville Co., 237 U. S. 597 (1915)	7
Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 (1942)	7-8, 28
Dickson v. Uhlmann Grain Co., 288 U. S. 188 (1933)	43
Emergency Fleet Corp. v. Western Union, 275 U. S. 415 (1928)	49
Farmers' Grain Co. v. Langer, 273 Fed. 635 (C.C.A. 8th 1921)	43
Federal Compress and Whse. Co. v. McLean, 291 U. S. 17 (1934)	12
First Iowa Hydro-Electric Coop. v. F. P. C., 328 U. S. 152 (1946)	6
First National Bank v. Missouri, 263 U. S. 640 (1924)	19
General Shale Products Corp. v. Struck Construction Co., 37 F. Supp. 598 (D. C. Ky. 1941)	48
Gulf, etc. R. Co. v. Hefley, 158 U. S. 98 (1895)	36
Hines v. Davidowitz, 312 U. S. 52 (1941)	6
In re Farmers Cooperative Assn., 8 N. W. (2d) 557 (1943)	25
Interstate Commerce Commission v. Cincinnati, etc. R. Co., 167 U. S. 479 (1897)	29-30
Kelly v. Washington, 302 U. S. 1 (1937)	4, 8
Lewis v. Fidelity and Deposit Co., 292 U. S. 559 (1934)	19
McClellan v. Chipman, 164 U. S. 347 (1896)	19
Miller v. U. S., 294 U. S. 435 (1935)	11
Minnesota, ex rel Whipple v. Martinson, 256 U. S. 41 (1921)	43
Missouri Pacific R. Co. v. Porter, 273 U. S. 341 (1927)	42

	PAGE
Morrill v. Jones, 106 U. S. 466 (1883)	11
Napier v. Atlantic Coast Line, 272 U. S. 605 (1926)	6
New York Central v. Winfield, 244 U. S. 147 (1917)	7
Oregon-Washington Railroad & Navigation Co. v. Washington, 270 U. S. 87 (1926)	26
Prentis v. Atlantic Coast Line Co., 211 U. S. 210 (1908)	29
Prigg v. Commonwealth of Pennsylvania, 41 U. S. (16 Pet.) 539 (1842)	5
Smyth v. Ames, 169 U. S. 466 (1898)	38-9
Southern Pacific Co. v. Arizona, 325 U. S. 761 (1945)	5, 7
Southern Railway Co. v. R. R. Comm. of Indiana, 236 U. S. 439 (1915)	6
State Public Utilities Commission v. Springfield Gas & Elec. Co., 291 Ill. 209, 125 N. E. 891 (1920)	32
Terminal R. R. Assn. v. Brotherhood of Railroad Trainmen, 318 U. S. 1 (1943)	7
Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426 (1907)	39
Texas & Pacific Ry. Co. v. Mugg, 202 U. S. 242 (1906)	39
Townsend v. Yeomans, 301 U. S. 441 (1937)	12
Union Brokerage Co. v. Jensen, 322 U. S. 202 (1944)	12
U. S. v. Hastings, 296 U. S. 188 (1935)	21
U. S. v. United Verde Copper Co., 196 U. S. 207 (1905)	11
Waite v. Dowley, 94 U. S. 527 (1877)	19
Waite v. Macy, 246 U. S. 606 (1918)	11
Williamson v. U. S., 207 U. S. 425 (1908)	11

MISCELLANEOUS CITATIONS

	PAGE
Administrative Procedure Act, 5 U. S. C. §1001, et seq.	16-8
Bikle, The Silence of Congress, 41 Harvard L. Rev. 200 (1927)	27
Commodity Exchange Act	25, 42
Department of Agriculture, Grain Futures Administration, "The Public Elevator Situation in Chicago", October, 1932	45-6
Federal Power Act (16 U.S.C., Sec. 825)	22
Federal Trade Commission, Agricultural Income Inquiry (1937)	46-7
Misc. Circ. No. 51, U. S. Department of Agriculture	14
S. Rept. No. 752 on S. 7 to 79th Cong., 1st Sess., Nov. 19, 1945	17, 18
S. Rept. No. 1775, 71st Cong., 3rd Sess.	21
Shepherd "Marketing Farm Products" (1946)	14
Supersedure of State Laws by Federal Regulation under the Commerce Clause, 86 U. of Pa. L. Rev. 532 (1938)	5
Uniform Warehouse Receipts Act	10, 42
United States Warehouse Act	8-18, 20-4, 25-54
38 Op. Atty. Genl. 539	48
53 Cong. Rec. Pt. 6, p. 5926 (1916)	10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

INTRODUCTORY STATEMENT

Respondents criticize our statement of the case for failing to set forth fully the allegations of their complaint. They proceed to supplement our statement with a detailed summary of their complaint for injunction. This summary is characterized as a recitation of "facts appearing in the record". (Resp. Br. 5) Counsel, however, fail to inform the court that the material allegations in the complaint were specifically denied by a verified answer filed

by Rice (R. 43-9).[1] Affidavits filed by respondents deal with only some of these allegations. (R. 60-75) Many of the allegations remain unestablished, and therefore cannot properly be referred to as "facts" of record.

The questions presented for decision, however, depend almost entirely upon an analysis of state and federal laws and regulations.

I.

PRINCIPLES OF SUPERSEDURE PRESENTED IN OUR ORIGINAL BRIEF ARE NOT DENIED.

There is substantial agreement with respect to the principles of law involved. We have urged that congressional intent to supersede state authority is never presumed, but must be clearly manifested; and further that supersedure will occur only where there is a precise coincidence of regulation or an actual and irreconcilable conflict between the state and federal systems.

The government, in its brief *amicus curiae*, takes the position that federal regulation exists as to the precise subject matters involved before the Illinois Commission, or in the absence of such precise coverage, that the particular matter of regulation is ancillary to and necessarily a part of expressly delegated federal authority. They urge (Govt. Br. 9):

> "The State regulatory laws invoked by the Rice complaint have been superseded by the United States

---

[1]Our record references are to the transcript of record printed by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, and forwarded with our petition for writ of certiorari. When the transcript of record was reprinted by the Clerk of this Court, we found that the page references varied from the first record. Respondents have used the second printing for their record references. We are distressed by this confusion, but believe a minimum of inconvenience will result, since few factual issues are involved, and none which depend upon record references.

> Warehouse Act because they relate to particular fields of regulation that have been specifically occupied by the Federal act, and their enforcement in those fields would plainly infringe the policy of Congress. It is not necessary to show that the provisions of the State and Federal acts are in irreconcilable conflict. It is enough that *the proposed State regulation relates to the precise subject matter regulated by the Federal act*, because with respect to that subject matter it was the policy of Congress to assume exclusive jurisdiction."[2]

Respondents, on the other hand, rely principally upon alleged conflicts between the two authorities. In contrast to the government's position, the warehousemen urge (Resp. Br. 22-3):

> "* * * it is immaterial, if such be the case, that the federal laws may not have expressly or completely dealt with all phases of regulations now in issue. Since Congress has by the express language of the 1931 amendments preempted and occupied the field of the regulation of federal warehouses, State laws—whether coextensive with, supplemental to, in aid of, or different from the federal act—are superseded and rendered inoperative."

Both briefs claim that the exercise of state regulation would infringe federal policy.

The position of the respondents is not free from inconsistencies, for while claiming repeatedly that reputed head-on conflicts with state authority, are the reason why supersedure must result (Resp. Br. 17-8, 36-59 *passim*), they nevertheless urge (Resp. Br. 2) that the:

> "* * * United States Warehouse Act, has so occupied and pre-empted the field of regulation of grain warehouses licensed under that Act as to deprive the Illinois Commerce Commission of judisdiction to regulate such warehouses * * *."

---

[2] Italics in quoted material throughout this brief have been supplied for emphasis.

The attempt to apply the theory of congressional occupancy of the field as a basis for supersedure, as Chief Justice Hughes said in the case of *Kelly* v. *Washington*, 302 U. S. 1 (1937), presupposes the absence of direct conflict. He discussed that question as follows (p. 9):

> "The state court took the view that Congress had occupied the field and that no room was left for state action in relation to vessels plying on navigable waters within the control of the federal government. 186 Wash. pp. 593, 596, 59 P. (2d) 373. And this is the argument pressed by respondents and the Solicitor General.
>
> "This argument, invoking a familiar principle, would be unnecessary and inapposite if there were a direct conflict with an express regulation of Congress acting within its province. The argument presupposes the absence of a conflict of that character."

The apparent reluctance of respondents to take a definite stand necessitates some discussion of the legal principles they seek to develop. Respondents would characterize their public warehouses as "interstate instrumentalities", thus creating a psychological basis for freeing them from state regulation. While it is true that the warehouses involved affect interstate commerce, nevertheless they have a single local situs. They are similar in that respect to a steel plant or a manufacturing establishment which may be subject to some federal control because of the movement of commodities in commerce through such plants, but such regulation involves a federal invasion of a field normally reserved to the states.

In such instances Congress has been slow to act, and this court has refused lightly to extend federal authority to effect a supersedure of the otherwise permissive exercise of state police powers.

Where a regulatory issue has been customarily dealt with on the national level, the court has more willingly

favored preemption. In those cases, as distinguished from warehousing regulation which has been traditionally a state function, the court has not required as rigorous an adherence to the rule of precise coincidence or irreconcilable conflict. A desire to protect federal policy from infringement and federal objectives from interference was manifest. But even so, the court has required that the state function either conflict with or "plainly and palpably" infringe federal policy: *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766 (1945).[3]

The cases relied upon by respondents to support supersedure of state regulation deal largely with matters which are of a national character, or with instrumentalities such as railroads, whose operations extend through many states, vulnerable to the burdens of multiple, varied state requirements, and who are subject to very comprehensive and complete affirmative federal regulation. In those instances, concomitant state regulation is more difficult to justify.

Thus, in *Prigg* v. *Commonwealth of Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842), the validity of an 1826 Pennsylvania criminal statute was involved, under which a convic-

---

[3] In *Supersedure of State Laws by Federal Regulation under the Commerce Clause*, 86 U. of Pa. L. Rev. 532 (1938), the author after a careful review of the cases finds that the Supreme Court has consistently demonstrated diligence in upholding state "quarantine", "food and drug", "game conservation", "warehouses and exchanges", and "vessel pilots" laws, but that "with the exception of isolated instances, the tendency to nullify state control over railroads has been marked. • • • More recent cases, however, would indicate a trend away from this judicial paternalism • • •." In his conclusion the author states (p. 539):

"With the exception of a few anomalous decisions, and those relating to railroad regulation, it is evident that, in the absence of express provisions to the contrary, actual conflict or coincidence has provided the real test as to the supersedure of the state rule. Thus, the extensive theories propounded in relation to Congressional 'occupation of the field' despite the absence of conflict or coincidence, appear to find but limited support in the actual holdings."

tion had resulted for seizing a fugitive slave and returning her to Maryland. The court set aside the conviction, pointing to Article IV, Section 2 of the Constitution, and the Federal Act of 1793 relating to fugitive slaves. The subject matter was expressly dealt with in the Constitution, and was one over which federal control had been assumed from the inception of our present form of government.

Similarly, in *Hines* v. *Davidowitz,* 312 U.S. 52 (1941), a Pennsylvania alien registration law was held to be superseded because, as the court said, it affected a field of "international relations".[4]

The case of *First Iowa Hydro-Electric Coop.* v. *F.P.C.,* 328 U.S. 152, 180 (1946) involved a state requirement which directly conflicted with and served as a "veto power" over the "comprehensive development of the water resources of the Nation" entrusted by Congress to the Federal Power Commission.

Finally, several railroad cases are cited by respondents, but even with respect to such cases, actual and positive conflict or precise coincidence over a detail of regulatory control was found.

In *Southern Railway Co.* v. *R. R. Comm. of Indiana,* 236 U.S. 439 (1915), the state statute required secure grab-irons and hand-holds on the sides or ends of every railroad car, while the federal act imposed penalties for failing to equip cars with hand-holds. A coincidence of regulation existed upon the precise subject matter involved.

Similarly in *Napier* v. *Atlantic Coast Line,* 272 U.S. 605 (1926), the court found (p. 612):

> "The federal and the state statutes are directed to the same subject—the equipment of locomotives."

---

[4]See discussion of *Hines* case in our original brief, p. 26.

In *New York Central* v. *Winfield*, 244 U.S. 147, 151 (1917), the state act imposed liability for injuries not resulting from negligence in the face of the federal act making negligence the basis of liability. Direct conflict.

In *Charleston & W. C. Ry. Co.* v. *Varnville Co.*, 237 U.S. 597 (1915), state and federal laws imposed differing and conflicting liabilities upon a carrier for loss or damage to interstate shipments handled by the carrier. The court in abrogating the state law said (p. 603):

> "It overlaps the Federal act in respect of the subjects, the grounds, and the extent of liability for loss."

In the above railroad cases the precise detail of regulation was specifically controlled by Congress. No claim was made that a general delegation to the Interstate Commission to regulate service and safety would nullify a specific state service requirement prior to an actual order rendered by the commission in conflict with the precise requirement. For example, in *Atlantic Coast Line* v. *Georgia*, 234 U.S. 280 (1914), a state requirement of specified locomotive headlights was upheld, notwithstanding congressional enactments relating to almost every other type of locomotive equipment, and the delegation to the Interstate Commission of general authority to regulate railroad service and safety. In recent cases involving railroads the court has sustained state safety and convenience requirements as against claimed federal conflict: *Terminal R. R. Assn.* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1 (1943—cabooses on interstate trains operated in terminal areas); *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945—state train length limitation laws).

The decision in *Cloverleaf Butter Co.* v. *Patterson*, 315 U.S. 148 (1942), which involved health regulations in connection with the manufacture of butter, is cited in support

of the proposition that state regulation may be precluded by a "clear implication or inconsistency", although "not expressly in conflict with the federal act". (Resp. Br. 32) We submit that this construction of the case is unsound. The issue upon which the decision turned was the existence of actual conflict. The court says, as a basis for its decision (p. 167):

> "Coming finally to the query whether the state's claim interferes or *conflicts* with the purpose or provision of the federal legislation, *we determine that it does.*"

And further (p. 168):

> "Confiscation by the state of material in production *nullifies* federal discretion over ingredients."

The principles announced in the *Kelly, Savage* and other similar cases where irreconcilable conflict was the standard applied, were cited in the *Cloverleaf* case with approval.

Forty-one states have provided for some form of warehousing regulation. This does not mean that there is here involved "multiple" state regulation affecting any single public warehouseman, as respondents have urged. (Resp. Br. 32, 38, 60) A single warehouse can be regulated by only one of the forty-one states, for it is located in only one state and all of its activities are conducted there.

II.

THE UNITED STATES WAREHOUSE ACT IS LIMITED AND CIRCUMSCRIBED IN ITS PROVISIONS, SCOPE AND PURPOSE.

We have urged that the United States Warehouse Act sought the establishment of a warehouse receipt of accepted value as collateral on loans, and have characterized the act as in essence a warehouse receipt act. In so doing, we rec-

ognize that to accomplish the congressional objective of fostering and promoting a dependable warehouse receipt, certain limited controls and supervision were necessary. Such supervision is embodied in the federal act—but all essential aspects of the act relate to that sole purpose and objective. A license and bond are required to assure the character and financial ability of warehousemen. Inspection and weighing of agricultural products is intended to promote uniformity of the commodity covered by the receipt. The examination and inspection of warehouses, the records required and the few duties imposed upon warehousemen with respect to the care and delivery of products stored are clearly directed toward the same program—to make certain that outstanding receipts are supported by actual grain in store in the amount and quality indicated. Finally, many specific provisions deal with the issuance, form and cancellation of warehouse receipts.

Respondents do not take issue with our characterization of the federal act, as a warehouse receipt act but quote legislative history to indicate that the United States Warehouse Act was much broader and "covered all phases of warehouse regulation and operation". (Resp. Br 25) The history quoted only makes more conclusive our assertion that the intent of Congress was to achieve the limited purpose of fostering a warehouse receipt which would be acceptable by bankers, and therefore more readily usable by farmers in marketing their products.[5]

The government concedes that the federal act "was intended to establish a warehouse receipt system", but concludes that such a objective "can be attained only by means of detailed regulation of the warehousing business

[5]See particularly pp. 61-4 of respondents' brief, where the congressional debates are in part set forth. The court below appears to agree that the federal act is in nature, form and intent essentially a warehouse receipt act. (R. 117)

itself * * *." (Govt. Br. 32) That conclusion is unwarranted. The details of control or supervision contained in the federal act insure that the commodity in the stated amount and quality is in store against each receipt outstanding, but no detailed regulation of the business of warehousing as a public utility is anywhere provided.

We are told by the government that if Congress only intended to establish a form of warehouse receipt, "it would in all probability have enacted legislation similar to the Uniform Warehouse Receipts Act, which had been adopted by 32 states and the District of Columbia at the time Congress had the subject under consideration". (Govt. Br. 29) But Congress did have in mind the Uniform Warehouse Receipts Act, and did feel that it was adopting a federal act which at least in part was of that character.

Congressman Lever, during debates on the proposed federal act in the House, was asked:

> "Mr. Smith of Michigan: Can the gentleman tell how many states have a warehouse system?
>
> "Mr. Lever: There are thirty-one states that have adopted the Uniform Warehouse Receipts Act."[6]

The federal act fostered a dependable warehouse receipt by following the provisions of the Uniform Warehouse Receipts Act (see legislative history quoted in Resp. Br. 62), and by adding limited supervision by a federal agency to make certain the commodity stored was where it should be at the right time, and in the proper amount and quality.

An analysis of the collateral provisions of the federal statute manifestly reveals this fact. For example, the records required to be kept are records of the products stored and receipts issued (Sec. 23); the accounts prescribed by the secretary in Regulation 5, Section 5 are not

---

[6] 53 Cong. Rec. Pt. 6, p. 5926 (1916).

accounts to assist in the determination of rates or the financial results of operations, but only accounts which will reveal the amount of grain received and delivered, receipts issued and cancelled, and insurance provided.

The penalty section of the statute (Sec. 30) again clearly indicates this positive focus upon the establishment of dependable receipts, and nothing more. The only penalties provided are for falsely representing oneself as a federally licensed or bonded warehouse, issuing fraudulent receipts, fraudulently classifying or weighing products stored, and converting stored products to one's own use.[7]

All of the other provisions of the act may be similarly analyzed to demonstrate their close adherence to the single purpose of fostering a warehouse receipts system. Any attempt to extend the plain language of the statute to encompass utility regulatory authority does violence to congressional intent and terminology.

Neither do the regulations issued by the secretary broaden the limited supervisory authority delegated. These regulations are issued "for the efficient execution of the provisions of this Act". (Sec. 28) The regulations follow the pattern of the act, and are solely directed to the promotion of a dependable warehouse receipt. They do not add to the secretary's authority, since such authority can be found only in the federal statute which is the charter of the secretary's power.[8] We do not dispute the validity of the regulations adopted, but we do dispute counsel's at-

---

[7]The government's reference (Govt. Br. 35, 55) to the penalty section as in any way in aid of the specific regulatory issues involved before the Illinois Commission is in error and misleading.

[8]*Morrill* v. *Jones*, 106 U. S. 466, 467 (1883); *Williamson* v. *U. S.*, 207 U. S. 425, 462 (1908); *U. S.* v. *United Verde Copper Co.*, 196 U. S. 207, 215 (1905); *Waite* v. *Macy*, 246 U. S. 606, 608-9 (1918); *Miller* v. *U. S.*, 294 U. S. 435, 440 (1935).

tempt to construe and extend those regulations beyond their compass and limited purpose.

Respondents have adopted the slogan that the United States Warehouse Act constitutes a "broad general regulatory scheme". (Resp. Br. 26, 28) To repeat that characterization does not make it so. Proof of that argument must lie in an analysis of the terms and provisions of the act itself.

We have set forth a complete summary of the United States Warehouse Act on pp. 28-30 of our original brief. No question has been raised over the accuracy or completeness of that summary. Yet it stands as undeniable refutation of the claim that the federal act is "broad" or even a regulatory system.

This court on three occasions has characterized the United States Warehouse Act as affording only a "measure of control".[9]

In the *Union Brokerage* case, the United States Warehouse Act was likened to the Tariff Act of 1930 as involving only "circumscribed control" which did not imply immunity from state regulation.

Primarily, the factor that conclusively negatives the United States Warehouse Act as in any way being a broad system of regulation is the almost complete absence of adjudicatory powers in the secretary. He is granted authority to issue, suspend and revoke a voluntary license. That is the full extent of his affirmative functions. In every other respect the secretary is lacking in legislative authority to consider a regulatory problem and direct or compel any action to be taken. We have argued in our original

---

[9] *Federal Compress and Whse. Co.* v. *McLean*, 291 U. S. 17, 22-3 (1934); *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, 207-8 (1944); *Townsend* v. *Yeomans*, 301 U. S. 441, 457-(1937).

brief that the *secretary is completely without power and authority to grant any of the relief sought before the Illinois Commission.* That fact is of fundamental importance to an understanding of the United States Warehouse Act. Our statement has not been refuted or answered by either the respondents or the government. It therefore must be considered as conceded.

In no sense is the act regulatory as we understand that term. It does not provide for adjudication of utility problems presented by complaint or on the secretary's own motion. First, there is no provision for the filing of complaints with the secretary. No machinery was set up to bring public grievances to his attention. Second, no provision is made and no authority exists for the conduct of hearings on any of the multitudinous problems involved in utility operations (aside from a license suspension or revocation). Third, no legislative standards have been expressed to control the disposition of utility regulatory problems. Fourth, no authority is granted to the secretary to issue any orders, directives or to take any other form of action which would compel a warehouse utility to pursue a course of conduct in the future. This, of course, is the essence of regulation. Fifth, since no provision is made for regulatory orders, of course there are no requirements that findings of fact be made, no allowance for petitions for rehearing, and no specification of judicial review.

We have urged that if the secretary were to exercise affirmative authority under the present federal act, his actions would violate due process because of the absence of appropriate legislative standards, provisions for findings of fact and judicial review.[10] This position has not been disputed.

---

[10]Original brief, p. 34.

In short, the secretary cannot prescribe utility rates, utility services or other conditions or practices for the future. He cannot act prospectively, a power common to all utility regulatory authorities. If there is a violation of the limited provisions of the statute—a past event—he may cancel a permissive license; but he has no statutory authority to correct the practice or prescribe the precise terms and details of its future exercise. The government has departed from the record to lay stress upon the fact that the secretary has held conferences with erring warehouse utilities, and has negotiated or wheedled or coaxed a modification of then existing conditions. But this argument, we submit, completely refutes the existence of affirmative utility regulatory powers.

This absence of mandatory authority must be considered, furthermore, in the light of the fact that the act does not require a license from any warehouseman. It is voluntarily applied for, and the secretary's representative, since the act's inception, has striven mightily to coax warehousemen into the federal system.[11] Obviously, the administrator is not going to make it too difficult for the licensee he is so anxious to retain under his supervision.[12]

---

[11]Misc. Circ. No. 51, issued 1926, reprinted 1932, *"The Farmer and the United States Warehouse Act,"* p. 14:

"If the warehousemen in the community where the farmer takes his products for storage is not operating under the Federal law, and the farmer desires the benefit of this law, he should let the warehouseman know that if he wants his business the warehouse must be operated under the law. • • • It rests then with the farmer to say whether he shall have a warehouse receipt issued under the Federal warehouse act."

[12]Shepherd *"Marketing Farm Products"* (1946). The author of the book, a professor of Iowa State College, after reviewing the United States Warehouse Act and its administration, says (p. 233):

"The voluntary nature of the service has another undesirable result. Warehousemen who want to engage in warehousing practices that are generally regarded as improper will not of course apply for licenses under the Act. The USWA [United States Ware-

An analysis of any of the utility regulatory issues presented to the Illinois Commission reveals the complete bankruptcy of the secretary's position under the United States Warehouse Act. Let us assume a warehouseman has rebated considerable storage charges to one of his customers as part of the sale of grain which the warehouseman himself is merchandising. The parties adversely affected by the discrimination may desire to seek redress under the federal act. No statutory provision is made for a complaint, but suppose they contact the administrator and tell their story. No formal hearings can be held. If they were, the administrative hearings would be entirely without legal standing. But let us assume the secretary investigates and finds the facts to be as reported. He cannot compel the warehouseman to change his practice. He cannot order new rates or practices to be instituted, nor can he award reparations as a means of redressing the past serious damage. The secretary can only discuss the matter with the warehouseman, and if he is fortunate, he may secure some kind of compromise. In the absence of such a compromise, he either has to forget the matter or revoke the voluntary license. But if the license is revoked, the warehouseman is free to function without a federal license, and that leaves the complainants still subject to the same ruinous discrimination.

The respondents, however, argue that when a license is revoked, state regulation immediately takes hold and future

---

house Act], therefore, cannot improve those warehousemen's operations. Furthermore, when any one of the warehousemen who are licensed under the Act infringes its regulations in some minor way, the administrators of the Act face a difficult problem. If they suspend or cancel his license because of the infraction, that forces him out of the system. He is then free to continue his objectionable practice, and in addition is free to do many other things which he probably would not try to do if he had remained under license. The cancellation of his license protects the reputation of the USWA, but it does not do anything to improve the practices of that particular warehouseman. It may in fact make them worse."

protection is forthcoming. This argument emphatically admits that regulatory power and control exist only on the state level. Affirmative utility regulatory action can be exercised only by the state, and whether a federal license exists or not, that statement is still true—the federal agency is without the power sought to be invoked before the Illinois Commission. It naturally follows, therefore, that no conflict or inconsistency between the two systems could possibly exist.

Respondents do not deny that the secretary is completely without power to issue an affirmative order or legally to compel a warehouse utility to pursue some future course of action—but we are criticized for our emphasis of the fact that "the United States Warehouse Act lacks the usual provisions found in statutes regulating utilities, particularly with respect to hearings, findings and judicial review". As to these, counsel says (Resp. Br. 30):

> "This argument overlooks entirely the provisions of The Administrative Procedure Act approved June 11, 1946 • • • which fully covers all these matters: Sec. 7 (hearings), Sec. 8 (decisions), Sec. 9 (imposing requirement for hearings and decisions as provided in Sections 7 and 8 in case of application, revocation and expiration of licenses issued by Federal Agencies), and Section 10 (judicial review)."

Putting aside the fact that the Administrative Procedure Act was passed two years after the filing of the complaint for injunction alleging supersedure, and thirty years after the United States Warehouse Act was passed, counsel is completely mistaken. The Administrative Procedure Act by its very terms does not apply to the United States Warehouse Act in the manner claimed.

Section 7 specifies hearing and Section 8, decision requirements, but then only in those proceedings where "adjudication [is] *required by statute* to be determined on the

record after opportunity for an agency hearing." (Sec. 5) The United States Warehouse Act, with respect to the regulatory issues here involved, does not authorize an adjudication, that is, the "agency process for the formation of an order", nor provide for hearings, or require a determination after opportunity to be heard. Even a casual reading of the Administrative Procedure Act should reveal that Sections 7 and 8 prescribe minimum requirements for hearings and decisions only where a regulatory statute itself makes affirmative provisions for decisions and hearings. That act does not apply here.[13]

Section 9 deals with licensing (a subject with which we are not here concerned), and serves to amplify the secretary's present regulations on that subject.

Section 10, judicial review, again has no application to the United States Warehouse Act or the regulatory issues here involved. That section "does not apply in any situation so far as there are involved matters with respect to

---

[13]Legislative history of the Administrative Procedure Act emphasizes this fact. S. Rept. No. 752 on S. 7 to 79th Cong., 1st Sess., Nov. 19, 1945.

Page 7:

"No hearings are required by the bill unless statutes already do so in a particular case."

Page 8:

"In each case, where other statutes require opportunity for an agency hearing, sections 7 and 8 set forth the minimum requirements for such hearings and the agency decisions thereafter * * *."

"Where existing statutes require that * * * particularized adjudications (called 'orders' in the bill) be made after agency hearing or opportunity for such hearing, then section 7 spells out the minimum requirements for such hearings, section 8 states how decisions shall be made thereafter, * * *."

Page 20:

"As heretofore stated in connection with sections 4 and 5, the bill requires no hearings unless other statutes contain such a requirement in particular cases of either rule making or adjudication."

which * * * agency action is by law committed to agency discretion."[14]

Since the secretary is without authority to issue any order or directive (except to suspend or revoke a license), there is no "agency action" or "final agency action" which can occur for which judicial review is provided. (Sec. 10(c) of the Administrative Procedure Act)

The inadvertence of counsel and the inapplicability of the Administrative Procedure Act to the regulatory issues here involved serve to highlight the fact that the United States Warehouse Act is not a regulatory statute, does not provide for utility regulation, and is therefore not amenable to the basic requirements of orderly administrative process and law.

In connection with our discussion of the United States Warehouse Act, we emphasized the fact that licenses issued are not required in order to conduct even interstate warehousing service, but are applied for voluntarily. They are permissive licenses. This system of securing voluntary submission to federal supervision negatives the claim of a broad utility regulatory system intended by Congress. Respondents argue that the voluntary or permissive aspect of licensing does not affect the situation, and then go on to urge erroneously (Resp. Br. 20):

> "By way of comparison, national bank charters are also permissive and voluntary but once having been organized as a national bank, *immunity from state systems of regulation follows.*"

This statement is not supported by any authority. Indeed, it is violently in conflict with this court's decisions in many cases, and is highly misleading.

---

[14]S. Rept. No. 752 on S. 7 to 79th Cong., 1st Sess., 1945, p. 26.

In *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 248 (1944), a state law was sustained which authorized attachments of depositors' accounts even though in a national bank. Mr. Chief Justice Stone, speaking for the court, stated:

> "*This Court has often pointed out that national banks are subject to state laws,* unless those laws infringe the national banking laws or impose an undue burden on the performance of the banks' functions."

In *McClellan* v. *Chipman*, 164 U.S. 347 (1896), the court sustained a Massachusetts statute, forbidding preferences through property transfers by insolvents, against the claim of conflict with a federal act authorizing national banks to take mortgages and conveyances of real estate for previous debt. The court qualified its entire discussion by stating (p. 360-1):

> "Nothing, of course, in this opinion is intended to deny the operation of general and undiscriminating state laws on the contracts of national banks, so long as such laws do not conflict with the letter or the general objects and purposes of congressional legislation."

In many other cases this court sustained state regulation in the face of claimed conflict with the National Banking Act.[15]

We respectfully submit that the United States Warehouse Act provides only for limited and circumscribed con-

---

[15] *Lewis* v. *Fidelity and Deposit Co.*, 292 U. S. 559 (1934)—upholding a state law creating a lien upon the assets of a national bank for state funds deposited therein; *First National Bank* v. *Missouri*, 263 U. S. 640 (1924)—state law enforced prohibiting the establishment of branch banks; *Waite* v. *Dowley*, 94 U. S. 527 (1877)—sustaining state law requiring national banks to transmit to town clerks a list of shareholders.

Of course, where an irreconcilable conflict exists between a state banking regulation and the National Banking Act, the state act naturally would be superseded.

trol of such activities of warehousemen as are necessary to insure a dependable warehouse receipt; that in no respect is it a utility regulatory statute, nor does it delegate to the secretary any affirmative powers to prescribe rates, service, practices or financial conditions for the future operations of a warehouse utility. Furthermore, the secretary cannot grant any of the relief that is being sought before the Illinois Commission. There can be no conflict or inconsistency between the federal and state systems involved, and there is no ground here for the invalidation and supersession of traditional state functions that now exist in forty-one states.

III.

THE 1931 AMENDMENT DEALS ONLY WITH THE LIMITED SUPERVISORY CONTROL OF THE UNITED STATES WAREHOUSE ACT AS ORIGINALLY ENACTED. IT WAS NOT INTENDED TO SUPERSEDE STATE UTILITY REGULATION NOT PROVIDED IN THE FEDERAL ACT.

The 1931 amendment to Section 29 did not have for its purpose the exemption of federally licensed warehouses from *all* state utility regulatory laws, as counsel would imply. Prior to 1931, the United States Warehouse Act imposed a measure of control upon grain warehouses. Numerous state laws also regulated such warehouses. Some states provided regulation not only within the limited field which the federal government had entered, but in a much wider field. Congress was not interested in the wider field. Its interest in the limited field was only moderate—so much so that it made state laws supreme and superior in the event of conflict.

This system of control proved unsatisfactory, so that in 1931 Congress decided that in the limited field in which the United States had entered the states should no longer be supreme, but the power and authority delegated by the United States Warehouse Act should be. It is clear that

the 1931 amendment in no measure affects the wider field of regulation lying outside the limited supervision and control provided by the United States Warehouse Act. This is inescapable because no enlargement of the scope of the federal act was provided and no delegation of affirmative utility regulatory power occurred.

What proved unsatisfactory under the United States Warehouse Act as it existed prior to 1931 was not co-existence of state regulation of federal licensees, but only the fact that where specific federal and state controls coincided or conflicted the federal act became subservient.

The limited purpose of the amendment is made clear in the committee reports and congressional debates, where "conflicts" with state laws and the resultant subservience of federal requirements are emphasized as the issue sought to be resolved. It is further made clear in a letter dated May 28, 1930, from the Federal Farm Board to the Chairman of the Senate Committee on Agriculture, and attached to the senate report.[16] The letter states:

> "The Farm Board is very deeply interested in the proposed amendment to the warehouse act, known as H. R. 7, for the reason that at the present time there is certain conflict in the warehouse measures as between the State and the Federal Governments, *which is sought to be cleared up by this amendment.*"

We contend that the federal act is exculsive only with respect to the circumscribed powers and limited supervision expressly delegated to the secretary. This is clearly the import of the court's decision in *U. S.* v. *Hastings*, 296 U. S. 188, 199 (1935), where the amendment to Section 29 is discussed and its limits recognized, when the court stated:

> "* * * while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act, * * *."

[16] S. Rept. No. 1775, 71st Cong. 3rd Sess., p. 3.

The government appears to agree with this position, for they say (Govt. Br. 25):

> "The field occupied by Congress is measured by the scope of the Secretary's authority under that act * * *. It is only in the field in which the Secretary's authority is exclusive that the State statute is superseded."

Our position is erroneously described as contending for continued state authority because the "State statute embodies a better method of regulation". (Govt. Br. 24) We urge that the federal act is silent—it does not delegate authority—with respect to the regulatory issues over which we seek to have the Illinois Commission act. The secretary is without affirmative utility regulatory powers, and is impotent to grant any of the relief we seek.

The concept of "dual regulation" has been misconceived. Where the state and federal agency both have final authority with respect to a specific subject matter, dual regulation exists. An example of that situation occurs under the Federal Power Act, where the commission is authorized to prescribe a system of accounts, and at the same time the act compels the utilities affected to adhere to accounting orders and systems of accounts which may be prescribed by the states. (16 U. S. C. Sec. 825) But where the authority of the state is being exerted upon a specific subject matter of regulation over which the federal government has no power or has not acted, dual regulation is not present.

In effect, counsel contends that merely because Congress legislated in the broad field of public warehousing, any state requirement imposed upon such warehouses would be dual regulation. This court has long recognized the permissive character of state regulation in a general field in which some

federal authority has been exercised, so long as the precise subject matter of federal control is not involved, or an irreconcilable conflict does not exist. That this is true would seem to be conceded by the government when they say (Govt. Br. 25):

> "* * * the State is not foreclosed by the Federal Warehouse Act from adopting suitable labor regulations, fire control ordinances, zoning laws, or other statutes dealing with subject matters not covered by the Federal statute."

And we say the state is not foreclosed from exercising utility regulatory authority over public warehouses even though federally licensed, for that is a subject matter not covered by federal statute.

Counsel for the government seek to sweep away the express congressional recognition of co-existing state authority as contained in Section 29. They argue that while the secretary, by that Section, is authorized to cooperate with state officials charged with enforcement of state warehousing laws, such cooperation is intended to cover only the operation of state laws upon non-federal warehouses. (Govt. Br. 39) Counsel read into the Section a restriction that is unwarranted. The statute deals broadly with "State laws relating to warehouses". It does not limit the type of warehouses to state houses alone. Cooperation by its very nature must relate to warehouses over which both the secretary and state officials have some supervisory authority, otherwise, no field for cooperation exists.

Significantly, Section 29, after authorizing the secretary to cooperate with state officials charged with the enforcement of state warehouse laws, continues by providing:

> "*but* the power, jurisdiction and authority conferred * * * under this Act shall be exclusive * * *" with respect to federal licensees.

This second clause refers to federally licensed warehouses. The use of the word "but" to provide the transition from the clause authorizing cooperation engrafts an exception upon the field of authorized cooperation with respect to federally licensed warehouses. In other words this section must be read as authorizing the secretary to cooperate with state regulation affecting *federal* warehouses, "but" the specific powers delegated by the act are exclusive, again with respect to those federal warehouses. In this manner Congress emphasized that state utility regulation not provided in the federal act was preserved, and at the same time laid the ground for a coordination of state and federal efforts.

The point is made that because of the 1931 amendment, state regulation of rates, services, practices and financial conditions would infringe federal policy. That contention begs the question, for what is the federal policy expressed in the United States Warehouse Act? Obviously, Congress sought to foster a dependable warehouse receipt, to promote a warehouse receipt system which bankers could rely upon. The federal act assures that a federal receipt will be supported by a proper amount and quality of agricultural products. State utility regulation could not conceivably impede the attainment of that object and that policy. If a state were to fix just and reasonable rates or require an improvement, or expansion of warehousing service, or eliminate self-preferences and other discriminations, or supervise security issues and other financial transactions to prevent financial excesses, the interest of the farmer, of the receipt holder and of the banker would be additionally protected. Nor would the secretary be in the least impeded in his limited supervisory functions or responsibilities. No recognized federal policy could be adversely affected by the vigorous exercise of affirmative state warehouse utility regulation. Counsel has not indicated what federal policy it is that would be so infringed.

IV.

THE MAJOR STATE REGULATORY ISSUES INVOLVED.

Respondents argue that since we failed to concede conflict "in the many points of impact with the federal law", the 1931 amendment would seem to be an empty gesture. (Resp. Br. 34)

Petitioners have not advanced such a position, but have conceded that the secretary has exclusive power, but then only with respect to the authority expressly delegated by Congress. The exercise of state power over the precise subject matter of regulation possessed by the secretary or in conflict with powers expressly conferred and exercised by him, has been superseded. Examples of such instances of control where the secretary is made supreme by the 1931 amendment are:

—Issuance and cancellations of licenses.[11]

—Prescription of the terms and conditions of federal warehouse bonds.

---

[11] We had previously taken the position that even though a federal permissive license were secured, a state license might be necessary. We stated in the court below:

"We concede that the issue of possible supersession of the state license requirement in the face of a license already issued by the federal government is a highly controversial question."

Our position was based upon the difference between a voluntary federal license and one compelled under state law as a condition to doing business, and also by the fact that a substantial portion of the grain stored by the respondent warehousemen is handled entirely in intrastate and not interstate commerce. However, we recognize that once a federal license is issued, the states should not be in a position to prevent the commencement of warehousing operations because of the absence of a state license. The issuance of a federal license would appear to be one of the "exclusive" authorities granted the secretary. This, in effect, is the holding of the South Dakota decision in *In re Farmers Cooperative Assn.*, 8 N. W. (2d) 557 (1943), and gives effect to the rather ambiguous enactment of Congress in 1936 of Section 5(a)(7) to the Commodity Exchange Act.

—Supervision over the issuance and cancellation of federal warehouse receipts.

—Prescription of additional terms and conditions for federal warehouse receipts.

—Establishment of standards for agricultural products.

What petitioners do contend and what we believe to be irrefutable, is that with respect to the state regulatory issues invoked by the Rice complaint, and hereinafter discussed, the secretary is without the semblance of statutory power to grant any of the relief sought or to compel the correction of the abuses charged. In the absence of such regulatory powers in the secretary, comprehensive state public utility legislation should not be superseded.

A. State financial regulation of (1) contracts and arrangements with affiliates and other utilities; (2) sales, leases and encumbrances of utility property and assets; and (3) security issues, has not been superseded.

It is conceded by all parties, as well as the court below (R. 122), that the United States Warehouse Act contains no provision dealing with the above financial aspects of public warehousing. The government further concedes that the conclusion to be drawn on this point "is not free from doubt", but urges supersedure on the ground that this type of security and financial regulation is ancillary to rate regulation. (Govt. Br. 65-6)

We submit that as to this area of regulation where concededly no federal authority is present, it must be obvious that state regulation is permissible.[18]

---

[18]Respondents' reference to *Oregon-Washington Railroad & Navigation Co.* v. *Washington*, 270 U. S. 87 (1926) is not in point. In that case Congress had established a system of quarantine for interstate movements of agricultural products which could be invoked by the Secretary of Agriculture. The state of Washington estab-

Respondents, in order to establish a relationship between these financial controls and the federal act, present a hypothetical case of a warehouseman required by the secretary, acting under Section 3, to install new equipment for which he must borrow money and issue securities. They assume that if such financial transactions were subject to state approval, a refusal of permission would result in revocation of the federal license. At the outset it should be remarked that the secretary does not have the power and cannot require the installation of new equipment, or the improvement of warehousing facilities. The example, therefore, lacks proper foundation. But accepting the hypothetical situation for the purpose of argument, if the warehouse utility sought to issue securities to finance an improvement, the necessity of submitting the proposed issue to state commission scrutiny to protect the public interest—investors as well as consumers—is sound and well-accepted public policy. The government concedes that such security issues would have to conform to state Blue Sky laws. (Govt. Br. 66) No reason can be advanced why the security issue should not also be subject to public utility regulation. The only difference is that utility regulation is more comprehensive and protects broader public interests.

Basically, the hypothetical fear of a state rejection of a proposed sound security issue needed to support a construction program, is too remote for serious consideration.

---

lished a quarantine against alfalfa, although the secretary had not acted. State action was invalidated on the ground that Congress had empowered the secretary to take the precise action involved, and had entrusted him with the discretion of determining whether a quarantine was necessary or not. Since no federal quarantine had been established, it was presumed the secretary had reached the conclusion no action was necessary. The state prohibition, therefore, was in direct conflict.

Bikle, *The Silence of Congress*, 41 Harvard L. Rev. 200 (1927) deals with the problem of constitutional prohibitions of state action because of the need for national uniformity. The doctrine does not apply here. See Govt. Br. 15.

The attempt by the government to secure state supersedure by urging that the absence of federal powers indicates "that Congress intended to accomplish its regulatory objectives without the exercise of those controls" (Govt. Br. 67), is violently opposed to accepted legal doctrine and to the position the government itself has announced throughout its brief. The reference to the *Cloverleaf* case does not lend support. As we previously pointed out, actual conflict was the point upon which the decision turned, and as the court stated (p. 169):

> "* * * since there was federal regulation * * * there could not be similar state regulation of the same subject."

B. The power of the Illinois Commission to fix and determine just and reasonable rates has not been superseded.

Respondents and the government differ sharply with respect to their concept of the secretary's rate powers. The government flatly contends that "the Federal act and regulations provide a complete system for regulating the rates charged * * *." (Govt. Br. 45) Respondents, on the other hand, scrupulously avoid such a position, and concede that the secretary cannot initiate, fix or determine a warehouse rate, (Resp. Br. 37)[19] but nevertheless, they urge that "* * * Congress did not intend that the states shall have any power to regulate the rates and charges * * *" of federal licensees. (Resp. Br. 42)

We will first reply to the government's position.

The only federal statutory provisions dealing with warehouse rates is Section 25 permitting the secretary to suspend or revoke a voluntary license if "unreasonable or

[19]See also our original brief p. 53, footnote 16, setting forth respondents' position before the Circuit Court of Appeals.

exorbitant charges have been made for services rendered", and Section 18(e), providing that federal warehouse receipts shall set forth the rate of storage charges.

From these meager provisions, it is impossible to construe rate regulatory authority. The function exercised under Section 25 to cancel a permissive license can be exercised only as a result of *past* exorbitant charges that "have been made for services rendered". The secretary cannot fix or regulate rates for the *future*. The distinction is substantial. The provision in the United States Warehouse Act is merely the expression of a common law obligation imposed upon public service companies not to charge exorbitant rates. The secretary's function in instituting license cancellation proceedings is quasi-judicial, but the fixing of rates for the future, the real import of utility rate regulation, is a legislative function. See *Prentis* v. *Atlantic Coast Line Co.*, 211 U.S. 210, 225-6 (1908) The government's position is completely disposed of by this court's decision in *Interstate Commerce Commission* v. *Cincinnati, etc. R. Co.*, 167 U.S. 479 (1897). The court there held that the Interstate Commission was without rate regulatory authority even though the *statute* (not regulations) required rates to be just and reasonable, prohibited unreasonable and discriminatory rates, provided for the filing and publishing of schedules and empowered the commission to enforce and execute the provisions of the act. The court refused to infer rate regulatory powers, saying (pp. 494-5):

> "The question debated is whether it vested in the Commission the power and the duty to fix rates; and the fact that this is a debatable question, and has been most strenuously and earnestly debated, is very persuasive that it did not. * * * the language by which the power is given had been so often used and was so familiar to the legislative mind and is capable of such definite and exact statement, that no just rule of con-

struction would tolerate a grant of such power by mere implication."

A distinction was drawn between the quasi-judicial function of determining that a past charge was unreasonable, and the legislative function of fixing a rate for the future (p. 499):

> "It is one thing to inquire whether the rates which have been charged and collected are reasonable,—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future, —that is a legislative act."

Finally, it was pointed out that the statutory incorporation of the common law duty that rates be reasonable does not imply a delegation of power to regulate rates (pp. 505-6):

> "Incorporating into a statute the common-law obligation resting upon the carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the act, does not by implication carry to the Commission or invest it with the power to exercise the legislative function of prescribing rates which shall control in the future."

In the face of this decision, if Congress sought to delegate rate fixing authority, it was on notice of the method it would have to pursue to do so. Congress and the legislative specialists of the Department of Agriculture have provided for rate regulation many times without difficulty. We suggest that warehouse rate regulation was properly and intentionally withheld from the secretary because of the existence of such regulation on the state level.

The government finds support for its position in the regulations and practices of the secretary. These regulations cannot secure for the secretary rate fixing powers if the statute has not delegated that power. The regulations however, have been misconstrued.

The secretary, pursuant to the authority to suspend or revoke a license if a past rate was exorbitant, has provided by regulations for information with respect to the rates being charged. He has required that a license application be accompanied by the rates to be charged, when rate changes are made, they are to be filed with him, and finally the warehouseman must keep his rates posted. (Reg. 5, Section 3, 7 C.F.R. 102.35)

The secretary has not sought to pass upon the rates filed, or to approve or reject them. He has by regulation merely asked that they be filed and kept current, a proper and reasonable administrative act. But the only legal authority he can exercise and the very limit of his power is to institute a license suspension or revocation proceeding if a past rate was exorbitant. If the warehouseman determined to continue making the same charges, or felt that the secretary was in error, the voluntary license might be revoked, but the warehouseman would be entirely free to continue charging those rates. The public would not be benefited or protected.[20]

In another respect we submit the government is in error. Throughout its argument it speaks of the secretary as determining that a submitted rate is "reasonable". (Govt. Br. 46-51) The secretary's power is limited to the cancellation of a license when he finds that a past rate is exorbitant or unreasonable. He has no authority to make a determination except as a part of a license cancellation proceeding, and the record does not show that he has ever made a determination of reasonable rates either in a license proceeding or otherwise. Rates may validly range from a level just above confiscation to a rate that is so high as

[20]With respect to the dilemma in which the secretary finds himself under a permissive license, see statement contained in footnote 12, p. 14, *supra*.

to be excessive or exorbitant. Reasonableness includes a wide band of rates, and is not a sharp line. The administrative function of establishing just and reasonable rates involves the exercise of informed judgment and discretion to fix a rate resting within the band of reasonableness. The secretary is without the power or the facilities to exercise such judgment. He may act only when a rate is so excessive as to become exorbitant.

Frequent reference has been made to this concept of a range of permissive rates which may be established in the administrative utility regulatory process. In *State Public Utilities Commission* v. *Springfield Gas & Elec. Co.*, 291 Ill. 209, 125 N.E. 891 (1920), the court said (125 N.E. 895):

> "The rate established must be just and reasonable, both to the public and to the utility. In Public Service Gas Co. v. Utility Com'rs., 84 N.J. Law, 463, 87 Atl. 651, it is said that a just and reasonable rate can never exceed—perhaps can rarely equal—the value of the service to the consumer, and on the other hand it can never be made by compulsion of public authority so low as to amount to confiscation; that a just and reasonable rate must therefore certainly fall between these two extremes, so as to allow both sides to profit by the conduct of the business and the improvement of methods and increase of efficiency; that justice to the consumer, ordinarily, would require a rate somewhat less than the full value of the service to him, and justice to the company would ordinarily require a rate above the point at which it would become confiscatory; * * * The property of the public utility is devoted to the public use. There is always the obligation springing from the nature of the business in which it is engaged—which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered."

See also *Banton* v. *Belt Line Ry. Co.*, 268 U. S. 413, 422-3 (1925).

The government repeatedly refers to alleged department practice to support its claim that federal rate regulation exists. These references are completely outside the record. The practice of counsel, we earnestly suggest, is highly reprehensible. The statements exaggerate what actually has been done, and are seriously misleading. This bland use of unsupported matter not in the record must be viewed in the light of the fact that the Department of Agriculture (then the War Food Administration) presented an affidavit in the District Court, allegedly setting forth department practice—but this affidavit was rejected by the District Judge, since it was completely argumentative and contained largely conclusions rather than recitations of fact. When the department was denied the opportunity of establishing alleged practices by innuendoes, and was held to a factual presentation, it abandoned the effort. The inference is clear that no facts existed. No further attempt was made to cure these objections and present a proper affidavit. Instead, the government remained silent, and now recites as facts matters which go even farther than the recitations in its rejected affidavit. We request that the court completely disregard such improper references. The respondents, who participated in all phases of this proceeding and presented affidavits on this point, correctly summarized the record with respect to the rate activity of the secretary as consisting of the filing by each warehouseman of a schedule of rates with the secretary. (Resp. Br. 8)

At the time this proceeding was before the District Court, we had made an investigation of the Federal Warehouse Section and were prepared to dispute the claims made by the department. When the department, however, failed to present any evidence of their alleged practices, either through a proper affidavit or testimony, there was nothing for us to answer. In view of the government's

present unfair action, and without waiving our objections thereto, we feel constrained to advise the court of the results of our investigation.

After consultation with the administrators of the United States Warehouse Act, we found the following:

1. While an application for a license is accompanied by proposed rates, no particular inquiry as to such rates is made, and the applicant is not required to justify the reasonableness of the rate proposed.

2. In only one instance was the issuance of a license temporarily withheld because of rates. (Apparently referred to by the government in its brief on p. 48 as an example of repeated practice.) That instance involved a country elevator in Kansas who submitted rates which granted free storage if the storer did not remove his grain, and imposed a charge of 5¢ per bushel upon its removal. The rates were designed to compel storers to sell their grain to the warehouseman involved. An obvious fraud upon the farmers was intended.

3. The Warehouse Section has never held a formal hearing concerning a proposed change of rates.

4. No federal license has ever been suspended or revoked on the ground that unreasonable or exorbitant rates were being charged.

5. The Warehouse Section does not have a rate section or a unit of trained accountants, economists and rate analysts to deal with warehouse utility rate problems.

We say unqualifiedly that there has been no federal regulation of federal warehouse utilities—and that if there had been such regulation the respondents would have made a record which would have definitely shown it.

The government, in its references to department practice, has sought to demonstrate that rates are changed by warehousemen through negotiation or persuasion. (Govt. Br. 46) Even if this were true, and we deny that this has been done in any "substantial number of cases", it does not establish the *power* in the secretary to *compel* any rate changes. Negotiations or conciliation cannot take the place of positive rate regulatory functions supported by legal sanctions. The possible cancellation of a voluntary license is no answer to the serious utility regulatory problem here presented.[21]

Respondents seek to further their claim of supersedure of state regulatory powers on the ground that a theoretical or speculative conflict between state and federal authority may occur. They concede an absence of affirmative rate making powers in the secretary, but they urge that because they are required by regulations to file their rates with the secretary, and because the secretary accepts a rate for filing, the state commission cannot exercise *bona fide* utility rate regulatory authority. Our original brief, pp. 58-60, disposes of this position.[22]

---

[21] It would appear that respondents argue that their federal license is "valuable" largely because on their theory it immunizes them from effective state regulation. They say (Resp. Br. 39):

"If the licensee fails to conform to the rate determined by the Secretary to be reasonable, his valuable federal license is revoked and he will immediately be subjected to state regulation."

[22] We do not concede that any of the state's rate regulatory authority has been superseded, as respondents erroneously assume (Resp. Br. 56-7), including the state statutory requirement that warehousing rates be filed with the Illinois Commission, properly published, and that no rate be charged other than those so filed and published. The requirement by the secretary that rates be filed with him so that he may be kept informed does not conflict with or supersede the comprehensive state provisions which are part of the general delegation of power to fix and regulate warehouse utility rates.

Counsel for respondents rely principally upon the case of *Gulf, etc. R. Co.* v. *Hefley*, 158 U.S. 98 (1895), for the proposition that a federal statute which requires a rate to be filed with a federal agency precludes state rate regulation. The case does not support that proposition. The facts were that a Texas statute made it unlawful for a railroad to collect a greater sum than was specified in the bill of lading, and provided as damages the full amount of the freight charges for each day of delay. The Interstate Commerce Act then in force, while not granting authority to the commission to establish rates, nevertheless did require the railroads to print and post schedules at each station, and prohibited a carrier from collecting a greater or lesser compensation than the schedules provided, under pain of severe penalty—a fine not exceeding $5,000, and imprisonment not to exceed two years, or both. The railroad's own bill of lading contained a newly established lower interstate rate, of which the railroad had failed to notify its agent at the involved station so that the posted rates were different. The suit was for damages because of a one-day delay.

The case is distinguishable on a number of grounds.

First, the state requirement that the rates on the bill of lading be adhered to was superseded because a direct and positive conflict of duties occurred with respect to a single precise issue. The federal act required adherence to the rates established in schedules. The court emphasized that Congress had legislated "upon the precise subject matter" (p. 104). The two acts, when put side by side, reveal a startling similarity, except for the requirement of adherence to the rate in the bill of lading, in one instance and the published schedule of rates in the other. The two statutes provided:

Texas statute	*Interstate Commerce Act.*
"* * * it shall be unlawful	"* * * it shall be unlawful
for any railroad company * * *	for such common carrier
to charge and collect, or to endeavor to charge and collect,	to charge, demand, collect, or receive
from the owner, agent or consignee of any freight * * *	from any person or persons
a greater sum	a greater or less compensation
for transporting said freight * * *	for the transportation of * * * property * * *
than is specified in the *bill of lading.*"	than is specified in such *published schedule of rates* * * *.*"

The court made it clear that the state act was superseded only because it covered a precise single issue upon which Congress had legislated in a conflicting manner, when it distinguished the case of *C. & N. W. R. Co.* v. *Fuller*, 84 U.S. 560 (1873). There a state statute required railroads to establish rates on the first of October and to post rates at all stations, and provided a penalty for charging a higher rate than those posted. The state act was sustained, notwithstanding a federal provision granting authority to railroads to carry passengers and freight and receive compensation therefor. The court said (p. 103):

> "It will be perceived that the two statutes do not conflict, do not prescribe different rules, and only in a very general sense can be said to be in relation to the same subject-matter."

In the instant warehouse case, there is no federal regulation of the "precise subject matter" (p. 104)—the establishment of reasonable rates.

Second, the provision of the state act, if validated, would have permitted railroads to fix special rates and practice discriminations merely by inserting the rate on the bill of lading. The Interstate Commerce Act had as its main purpose the prevention of discriminations, and therefore it was essential to make the schedule of rates, rather than the bill of lading, the controlling rate, in order, as the court said, to avoid "favoritism". The United States Warehouse Act does not control rate discriminations.

Third, in the *Hefley* case, the rate involved was an interstate rate covering a shipment from Missouri to Texas. The warehouse rates are for the storage of grain in Illinois.

Fourth, a violation of either the state or federal statute in the *Hefley* case would have subjected the railroad to serious penalties. No penalties are imposed under the United States Warehouse Act if a warehouseman refuses to file a rate, other than to suffer the possible suspension or revocation of his permissive license.

Finally, the court in the *Hefley* case did not determine that comprehensive state utility rate making powers which operate as an aid to an implied federal purpose of preventing exorbitant rates would be superseded or be in conflict with the federal provisions. In fact, such an extension of the holding in the *Hefley* case is negatived by this court's decision in *Smyth* v. *Ames,* 169 U.S. 466 (1898). In that case the validity of state regulation of intrastate railroad rates was questioned on the ground of supersedure. The railroad involved, the Union Pacific, had been consolidated by an act of Congress which contained a provision summarized by the court as follows (p. 521):

> "* * * Congress may reduce the rates of fare on the Union Pacific Railroad if unreasonable in amount, and may fix and establish the same by law whenever the net earnings of the entire road and telegraph, ascer-

tained upon a named basis, should exceed 10 per cent upon its cost, exclusive of the 5 per cent to be paid to the United States."

The supersedure issue was stated as follows (p. 519):

> "The argument is that Congress by this enactment has reserved to itself exclusive control of rates, interstate and local, to be charged on the Union Pacific Railroad."

As to this the court said (p. 521):

> "Undoubtedly Congress intended by that act to reserve such power as was necessary to prevent the corporation from exacting rates that were unreasonable. But this is not equivalent to a declaration that the states through which the railroad might be constructed should not regulate rates for transportation begun and completed within their respective limits."

In the *Smyth* case, therefore, although Congress had expressly assumed the authority under legislative contract to reduce the railroad's rates if unreasonable, and to fix a rate that would provide earnings of not to exceed a stated percentage, and despite this regulatory power to prevent exorbitant and unreasonable rates, state utility rate regulatory powers were sustained.[23]

In conclusion, we urge that the secretary has not been delegated affirmative utility rate regulatory powers. He can-

---

[23]The other cases cited by counsel under this heading are not in point. *Texas & Pacific Ry. Co.* v. *Mugg*, 202 U. S. 242 (1906) stands for the well-established principle that a carrier cannot make special deals in departure from its schedule of rates. By this rule, the primary purpose of the whole Interstate Commerce Act, of preventing discrimination, is given effectiveness. No state law was involved.

Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426 (1907) concerned the question of primary jurisdiction over reparation issues. The commission is considered the first tribunal in which reparations can be sought in order to protect against conflict in decisions and consequent confusion and discrimination in rates charged by the same carrier. No state law was involved.

not fix and determine the warehouse rate that must be charged in the future. His authority extends no farther than the institution of license proceedings in the event a past rate for services already rendered is found to be exorbitant. No possible inconsistency or conflict between this very limited function and the comprehensive utility rate making powers of the Illinois Commission is discernible. It is respectfully suggested that the United States Warehouse Act is intended primarily to deal with the warehousing problems of country elevators, and not of the great warehouse utility institutions located in terminal markets. The rate reference in the federal act thus becomes a crude or elementary means of protecting the farmers against extortion, but does not undertake the vast economic problems inherent in the proper establishment of just and reasonable rates for the utility institutions that provide the public warehousing services at our terminal markets.

C. The state constitutional prohibition against public warehousemen engaging in the conflicting function of grain merchandiser and dealer is not superseded.

The Illinois State Constitution has been construed to prohibit public warehousemen from competing with their own customers, as they necessarily do, when they deal in and merchandise their own grain. Rice seeks to have the Illinois Commission enforce future compliance with this provision. The strong public policy that prompted such state action was well stated by the Illinois Supreme Court in *Central Elevator Co.* v. *People*, 174 Ill. 203, 51 N.E. 254 (1898), as follows (51 N.E. 256):

> "The public warehouses established under the law are public agencies, and the defendants, as licensees, pursue a public employment. They are clothed with a duty towards the public. The evidence shows that defendants, as public warehousemen storing grain in their own warehouses, are enabled to, and do, overbid

> legitimate grain dealers, by exacting from them the established rate for storage, while they give up a part of the storage charges when they buy or sell for themselves. By this practice of buying and selling through their own elevators, the position of equality between them and the public whom they are bound to serve is destroyed; and by the advantage of their position they are enabled to crush out, and have nearly crushed out, competition in the largest grain market of the world. • • • In exercising the public employment for which he is licensed, he cannot be permitted to use the advantage of his position to crush out competition, and to combine in establishing a monopoly by which a greater accumulation of grain is in the hands of the warehousemen, liable to be suddenly thrown upon the market whenever they, as speculators, see profit in such course. The defendants are large dealers in futures on the Chicago Board of Trade, and together hold an enormous supply of grain ready to aid their opportunities as speculators. The warehouseman issues his own warehouse receipt to himself. As public warehouseman he gives a receipt to himself as individual, and is enabled to use his own receipts for the purpose of trade, and to build up a monopoly and destroy competition. That this course of dealing is inconsistent with the full and impartial performance of his duty to the public seems clear."

This state prohibition, counsel urge, has been superseded because of the requirement of the United States Warehouse Act in Section 18(i) that a federal warehouse receipt contain a statement of the warehouseman's interest in grain covered by the receipt, if that is the fact. Here, again, we find the respondent warehousemen and the government at odds with respect to the interpretation of the federal act. Respondents claim that Section 18(i) "authorize warehousemen to store their own grain". (Resp. Br. 47) The government, on the other hand, concedes that Section 18(i) "does not affirmatively authorize a licensed warehouseman to store his own grain". (Govt. Br. 63)

Obviously, the federal provision merely requires this specification of ownership because there is not a "strictly disinterested custodianship". (Reg. 4, Sec. 1(c), 7 C.F.R. 102.18c) The required statement is similar to the specification set forth in the Uniform Warehouse Receipts Act. No federal policy can be evolved from this provision which is in such common usage, other than the policy that there be a statement of ownership when it exists. If such ownership is prohibited in some states, the necessity for the statement will not occur.

No attempt is being made to vary the form or term of a federal warehouse receipt, as respondents erroneously argue. (Resp. Br. 48) We grant that the form of federal warehouse receipts must comply with the federal statute. But full compliance will occur with the state prohibition in effect, since in that event the warehouseman will not store his own grain, and therefore no statement of ownership need be made.

Section 5(a)(7) of the Commodity Exchange Act has no relevancy. (Resp. Br. 48) That section merely requires that federal receipts shall be accepted in satisfaction of futures contracts. It does not provide that receipts covering the warehouseman's own grain must be made available for tender on futures contracts. The statute will be fully satisfied if federal receipts covering public grain are accepted in satisfaction of futures deliveries.

The case of *Missouri Pacific R. Co.* v. *Porter*, 273 U.S. 341, 345 (1927), is not in point. There the Interstate Commerce Act required carriers to establish rules affecting the form and substance of bills of lading, and empowered the Interstate Commission to execute those provisions, and, after hearing, to fix reasonable rules and practices where it found them to be unreasonable. This complete federal regulatory system precluded a state law which prevented

a carrier from imposing conditions on a bill of lading that would limit its common law liability. In the instant case, the state duality prohibition does not infringe federal requirements with respect to the form or conditions of federal warehouse receipts.

The case of *Farmers' Grain Co.* v. *Langer,* 273 Fed. 635 (C.C.A. 8th 1921), is distinguishable on its face. The federal law imposed a requirement that an inspector shall have no interest in the business involved, while the state law said he may have an interest. In the instant case, there are no federal requirements and no possibility of conflict with the state prohibition. This court has sustained state prohibitions supported by sound public policy, even though federal acts acquiesced or even authorized the practice: *Dickson* v. *Uhlmann Grain Co.,* 288 U.S. 188 (1933); *Minnesota, ex rel Whipple* v. *Martinson,* 256 U.S. 41 (1921).

D. Only state laws can deal with the discriminations and self-preferences practiced by public warehousemen. Such regulation has not been superseded.

Section 13 of the United States Warehouse Act is principally relied upon to supersede the Illinois Commission's complete powers to prevent discriminations and prescribe non-preferential rates and practices. Again the government and respondents take a conflicting view with respect to the meaning of a federal provision, this time with respect to Section 13. Respondents urge that the section "refers to storage of grain during the whole storage process" (Resp. Br. 45), while the government states the section prohibits discriminations only at the time of receipt for storage. (Govt. Br. 54) The section obviously prohibits a warehouseman only from discriminating between two individuals who are seeking to place grain in store. It requires him to "receive for storage" and conditions his obligation by the provision "so far as its (warehouseman's) capacity

permits". It deals with grain "tendered to him". The section was intended to deal with a situation that may occur in the small farm community where a single country elevator is able to squeeze a farmer seeking storage by refusing to grant facilities.

It is true, as the government contends, that the discriminatory refusal to grant storage may take the form of an arbitrarily excessive rate. But the problem we have presented for state regulation in the Chicago terminal market is of an entirely different character. In Chicago, by reason of the existing practices of the warehousemen, almost all, if not all, the grain in store is originally placed there by the warehouseman himself. He will then normally hedge his holdings of actual grain by making a short sale on the futures market. The public acquires an interest in such grain only when delivery is made by the warehouseman by tendering warehouse receipts. The public, therefore, first comes in contact with the warehouseman *after the grain is already in store.* It is then that the numerous self-preferences and discriminations begin.

A few examples should illustrate the evil practices which we charge. Grain is graded according to the United States standards, and "contract grade" is required for delivery. Grain which has features superior to contract grade commands a premium price. The grade standards provide certain leeway in each of the conditions graded. For example, contract grade may provide for a weight of 52 lbs. to 56 lbs. per bushel. Let us assume a warehouseman issued warehouse receipts held by the public for half of the grain in his warehouse. The other half belongs to him. All the grain is of contract grade, and therefore commingling is permitted. In such a situation we charge that it is customary for the warehouseman to mix and treat the grain so that the receipt holder will be delivered the very bottom of the

grade—52 lbs. with respect to weight—while the warehouseman retains the selected portions of the total grain in store, which may weigh an average of 59 lbs. and command a substantial price premium.

Discriminations in the release of transit billing arise out of the fact that varied through rates are offered to local points around Chicago, depending upon the point of origin of the shipment. No through transit rate has been provided by the railroads if grain originates on a water carrier. It is only after grain is loaded out of a warehouse pursuant to the demand of a receipt holder that he receives his bill of lading specifying his transit privileges. We charge that normally the receipt holder will be supplied with no transit privileges, or with a transit rate that is not as favorable as other transit tonnage available to the warehouseman. While this process is going on, the warehouseman is seeking to merchandise his grain. He will know where the market is at the time, and will retain for himself the transit tonnage that is most favorable to the transportation of grain to that market. We are asking for the prevention of this ever continuing selective process, which is exercised for the self-preference of public warehousemen, and in discrimination against their customers.

The consequences of these practices were discussed in *Central Elevator Co.* v. *People*, quoted on pages 40-1, *supra*: More recently, in October, 1932, the Department of Agriculture, Grain Futures Administration, issued a report entitled "The Public Elevator Situation in Chicago", wherein the effects of such elevator practices were described as follows (p. 83):

> "An important result of the mixing operations at public elevators is the reluctance of many purchasers of grain to receive delivery on futures contracts. This, combined with elevator domination of the process of making delivery, has tended to reduce the quantity

delivered on futures contracts to a very small proportion of the futures contracts made. . . .

. . . .

"The small volume of futures contracts settled by delivery increases the possibility of manipulation in the delivery month, and allows the futures market in that month to be dominated by local conditions. The elevator operators' interest in deliverable grain frequently makes them an important factor in these local conditions."

And again (p. 85):

"If the Chicago Board of Trade is to provide dealers with an efficient futures market, it is imperative that the purchasers should have utmost confidence in the quality of the grain to be received; that published figures of grain in store by grades should be accurate; and that the situation in the delivery month should not be subject to domination by local conditions. The public elevator situation in Chicago is tending to impair these essentials, and has, therefore, an undesirable effect on the futures market."

The Federal Trade Commission, pursuant to resolutions of Congress, has investigated and made successive reports on the grain trade. In 1937 it submitted a report to Congress entitled "Agricultural Income Inquiry", wherein it was stated (p. 40):

"The warehouse storage situation is apparently worse today than at the time of the Commission's previous recommendations." (In 1924 and 1926)

The basis for the Commission's criticism included (p. 347):

"Public warehousing has for a long time been on the decline. This is especially true in the case of forwarding markets such as Chicago and Duluth. Various

> causes have been assigned for the decline. It has been attributed partly to the fact that the entrance of the public elevator proprietors into the grain business has made it impossible for a grain dealer to store in the public elevator in competition with such merchandisers who either have no storage to pay except to themselves, or have low cost for such storage, due to favorable leases of elevator property."

The Commission pointed out further that the "mixing of grain to 'skin grade' (to a point so near the bottom of the grade that it will be just above the top quality in the next lower grade)" is a "principal source of revenue to terminal warehouse operators." (pp. 350-3)

Sections of the United States Warehouse Act referred to by respondents and the government which allow the mixing of fungible goods of the same grade (Sec. 15, 16, 18) do not deal with the above problem. Rice has complained of discriminations and subtle self-preferences of various types. But the enumeration of such practices could not possibly cover the many other ingenious devices that now exist or may be evolved to achieve the same purpose—self advantage and preference to the warehouseman as against his public customer.

Rice has also complained of another form of discrimination—that is, the grant of an unduly preferential storage rate to the federal government. Respondents argue outside the record when they say that such preferential rates have been disclosed to the secretary. (Resp. Br. 43) It is true that the rate schedules filed contain express reservations by the warehousemen of the "right" to make "special deals" with large storers or with the government. But the terms and conditions and the inherent discriminations that may result from such "special deals" are not revealed on such schedules. The secretary, in any event, has not

approved any rate schedule.[24] He does not have that power, and has not exercised that function. If he received a schedule and recognized that preferences existed and did nothing about it, his lack of authority to act on the matter would only be emphasized.

It is not disputed that the secretary has not been granted the affirmative authority to order or direct or compel the elimination of any form of discrimination. He cannot fix and determine rates or practices for the future that are fair, non-discriminatory and non-preferential. This authority exists only on the state level. To deny the states this function would leave the discriminatory abuses referred to above, entirely uncontrolled.

Respondents argue that preferences to the federal government are not discriminatory. But this is an argument on the merits of the issue presented, and does not assist in determining relative power to rectify discriminations that are legally and factually found to exist. Cases cited are not in point. *General Shale Products Corp.* v. *Struck Construction Co.*, 37 F. Supp. 598, 603 (D.C. Ky. 1941) and 38 Op. Atty. Genl. 539, deal with the Robinson-Patman Anti-Price Discrimination Act. That act seeks to avoid price discrimination which effects a substantial lessening of competition. In the *Shale* case, it is pointed out that

---

[24]In the Rice verified answer, we denied the allegations that schedules were duly filed and that they constituted proper and sufficient schedules setting forth the warehousemen's rates and practices. (R. 45) The affidavits filed by the respondent warehousemen did not include a copy of their schedules of charges. They recited only that they filed their schedules of rates, made no "change" in rates without filing a proposed schedule, and kept their rates posted. (R. 60-75) Despite respondents' failure to file their rate schedules, they now claim, without record support, that rate preferences were disclosed to the secretary. Their statements that "changes" in rates were filed with the secretary do not cover the rate rebates that may have occurred, which are not rate changes.

the government is not in competition with other buyers of the articles involved.

In *Emergency Fleet Corp.* v. *Western Union*, 275 U.S. 415 (1928), the court states, "it is faintly argued that the Western Union is entitled to the commercial rates * * *" since the Interstate Commerce Act prohibits discrimination. The court's answer to this suggestion is obviously based upon Section 22 of the Interstate Act, which provides "that nothing in this act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States or municipal governments * * *." No similar legislative dispensation is found in the warehouse or public utility acts.

E. Only the state has the regulatory power to order the establishment of safe and adequate public warehousing service and facilities, or improvements and additions to such service and facilities. No supersedure of this authority has occurred.

The Rice complaint invokes the authority of the Illinois Commission to compel the improvement or addition to warehousing services and facilities whenever, after hearing, it is established that such services are inadequate or unsafe, or in other respects not serving public necessities. No claim is made that the secretary can order or compel a warehouseman to improve his warehousing facilities. For example, suppose additional grain drying machinery were required to fulfill the needs of adequate public warehousing service. The secretary cannot deal with the problem, but the state is fully and legally equipped.

We submit that the decision of this court in *Atchison T. & S. F. R. Co.* v. *Railroad Commission*, 283 U.S. 380 (1931) is conclusively determinative not only of the immediate

issue of service regulation, but also with respect to all of the utility regulatory issues here discussed. In that case the court recognized that the Interstate Commerce Commission was delegated authority to *approve* a railroad addition (construction of a union terminal). In fact, such federal approval had to be secured before construction could be commenced. Yet, in the absence of federal authority to *compel* that service improvement, the state of California was free to exercise its regulatory authority and compel construction. The court refused to supersede that state function. The Interstate Commerce Act is a complete and comprehensive regulatory statute, and deals broadly and generally with many problems of railroading service. In the absence, however, of the precise power to *compel* this type of addition to railroad facilities, state action was held to be permissible.

Respondents have erroneously implied that the Interstate Commerce Act sanctioned the state compulsory action in the *Atchison* case by some express provision. (Resp. Br. 53) That is not so. The federal act there, as here, was silent on the precise regulatory issue.

Sections of the United States Warehouse Act and the federal regulations cited to effect supersedure of state service regulation, deal with the care of agricultural products in store. These provisions seek to insure proper coverage of outstanding warehouse receipts.

We have already demonstrated the limited scope of Section 3 (original brief p. 65), which authorizes the secretary, upon license application, to determine that a warehouse is "suitable" for the storage of the "particular agricultural product" for which application is made. That section does not delegate authority to supervise, no less regulate, the adequacy of warehousing service and facilities. It does seem significant that respondents, in further describing

the authority granted the secretary by Section 3 to prescribe the duties of warehousemen with respect to the care and responsibility of stored products, scrupulously and repeatedly delete from the quoted section the qualification that the authority to prescribe such duties is "within the limitations of this Act". (Resp. Br. 51, 53. See also Govt. Br. 33, 57)

F. The state authority to pass upon the abandonment of public warehousing service has not been superseded.

No claim is made that the United States Warehouse Act controls the abandonment of service or requires secretarial approval before such abandonment occurs. That regulatory function is essential to prevent unwarranted reduction of public utility service and facilities.

The federal license is voluntary and permissive. Service may be suspended under the federal act at will, either before or after the license is surrendered. The secretary cannot prevent abandonments even though contrary to the public interest. State regulation in this field must therefore be completely unimpeded. A state action in preventing unwarranted abandonment of public utility warehousing service would not infringe upon the voluntary character of the federal license. It would serve to protect the public interest and give meaning to the dedication of property to the public use.

Respondents' argument in this connection approaches the ludicrous. (Resp. Br. 57-8) They present a hypothetical case of a federal inspection which reveals a totally unsuitable warehouse which cannot be repaired, and then they say with respect to this warehouse:

> "Unless it is abandoned, the warehouseman will lose his federal license. Is the state to have jurisdiction to permit or refuse this abandonment?"

This line of argument is put forth to defeat state authority. We had supposed that if a federal warehouse was unsuitable for storage, the federal license would be cancelled. Respondents so argued. (Resp. Br. 53) They also argue that if a warehouseman abandons his service he loses his license. (Resp. Br. 57) They now urge that if he *fails* to abandon, he will lose his license. But what is this hypothetical warehouseman going to do with his federal license after his services are abandoned? The possibility of being allowed by the secretary to retain his license certificate after the warehouseman has completely removed himself from any warehousing facilities or service, is a federal benefit which must not be allowed to infringe the exercise of the sovereign powers of the state. Furthermore, to assume that the state will prevent the abandonment of a warehouse that is unsuitable for storage is conjectural and unlikely.

As a test of respondents' position, suppose a majority of warehouses under state regulation wish to abandon their service. All they would have to do, is apply for a federal license and after securing the license, abandon their service with impunity. What then becomes of the public interest?

The right to pass upon the abandonment of service is part of the commission's power to regulate the adequacy of public utility warehousing services and facilities. We agree that authority over abandonment is meaningless without the power to regulate service.

CONCLUSION

There are six major regulatory issues involved before the Illinois Commission which the respondent warehousemen and the government claim to have been superseded. With respect to two of these issues, both parties concede that the federal act contains no provisions whatever dealing with the subject (authority over security issues and financial

transactions, and supervision over the abandonment of service). With respect to three of the remaining four regulatory issues, the positions of the respondents and the government differ sharply and depend upon contradictory and inconsistent interpretations of the United States Warehouse Act. Thus, in the case of rate regulation, the government claims that the secretary has been delegated complete authority to regulate rates. Respondent warehousemen, however, concede that the secretary does not have the authority to regulate or determine rates. In this connection it should be noted that the record does not disclose a single instance where the secretary conducted a rate proceeding.

In dealing with the state prohibition against warehousemen acting in a dual and conflicting capacity, the government admits that Section 18(i) of the United States Warehouse Act does not "affirmatively authorize" the warehousemen to act in a dual capacity, while the respondent warehousemen claim that it does so authorize them.

With respect to the power to regulate and prevent discriminations, the principal section relied upon for federal supersedure is Section 13 of the United States Warehouse Act. The government construes this section as preventing discriminations only in the receipt of grain, while the warehousemen contend the section applies not only to the receipt of grain, but covers the whole storage process.

The United States Warehouse Act has been in existence for over thirty years. The sharp differences in the interpretation of that act, put forward by two parties seeking to invoke its sanctuary against state regulation, makes apparent the fact that administration of the act has not effected a crystallized position as to the regulatory issues involved. There has been no evolution of regulatory principles because the act makes no provision for affirmative regulation, and none has occurred.

A federal statute upon which there is so little agreement by those espousing its supremacy does not furnish the necessary tools for the establishment of actual and positive conflict, or precise coincidence with state authority. Supersedure will not be ordered in support of presumed and indefinite federal functions.

Respectfully submitted,

IRVIN ROOKS,
LEE A. FREEMAN,

Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

February 12, 1947.

COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 472

ILLINOIS COMMERCE COMMISSION, et al., etc., et al.,

Petitioners.

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS ILLINOIS COMMERCE COMMISSION AND OTHER OFFICIALS OF THE STATE OF ILLINOIS.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
208 South La Salle Street,
Chicago 4, Illinois.
Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

CHAMPLIN-BREALY COMPANY, CHICAGO 365

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 472

ILLINOIS COMMERCE COMMISSION, et al., etc., et al.,

Petitioners.

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS ILLINOIS COMMERCE COMMISSION AND OTHER OFFICIALS OF THE STATE OF ILLINOIS.

Because the instant petitioners conceive the issues of the case of ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL. V. GREAT LAKES ELEVATOR CORPORATION, ET AL., No. 472, AND ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL. V. BOARD OF TRADE OF THE CITY OF CHICAGO, No. 473, to be so intimately related as to be not susceptible of separate consideration, this single reply brief is filed in both cases.

ARGUMENT.

I.

The questions mooted in these cases are not definitive issues but are abstract and general questions as to the boundaries between state and federal authority over warehouses. Therefore they are not properly susceptible of decision and the cases should be dismissed.

Respondents' briefs make it clear that, as Illinois intimated in her brief in support of her petition for *certiorari*, the plaintiffs do not seek this court's decision upon the validity of any specific or particular regulation or other action of the Illinois Commission. Rather do they importune it to define in abstract and general terms the limits between state and federal power over the vast, intricate and vital business of storing the nation's grain.

A granary, whether or not it is licensed under the Federal Warehousing Act, must comply with many laws of nature if it is to serve the public adequately. It must be proof against thieves and vandals, against rodents, against bacteria, against fire, against extremes of heat and cold, and, especially where it stands upon a wharf, against water seepage. And public policy, whether state or federal, may concern itself with the safety of employees, customers and the public generally. Therefore, the myriad phases and ramifications of the business are by their inherent nature subject in diverse and manifold aspects, to national, state and local regulation.

In addition, so highly sophisticated and integrated an economy as that of our modern industrial and commercial society requires that the warehouseman's receipts, which

are commercial specialties evidencing ownership of the nation's foodstuffs, assure that they will be honored according to their tenor. Among the many important aspects of the grain warehouse business that are and must be subject to regulation either by state or federal authority are rates, physical facilities, financing both by the public and by transactions among affiliates, segregation and commingling of fungible grains, trading on the part of a warehouseman in grain stored in his own warehouse, the location of elevators both in respect to their proximity to water and rail routes and with respect to zoning programs, negotiability and other contractual implications of warehouse receipts, inspection of grains with respect to fitness for consumption and for the purposes of grading, and the liability of warehousemen as bailee or despositary of grains.

From the single phrase in the Federal Warehouse Act (Title 7, U.S.C.A. Secs. 1, *et seq*) providing that the Secretary of Agriculture's power, authority and jurisdiction "shall be exclusive with respect to all persons obtaining a license hereunder," respondents seek to obtain a declaration generally and categorically interdicting all regulation of federally licensed warehousemen by the Illinois Commerce Commission.

Respondents do not contend that federally licensed warehouses are exempt from all state surveillance in respect to such aspects of the business as affect the safety and security of grain stored (respondents concede that fire and health laws may be applied to federally licensed warehouses) nor to regulation of financing in general (respondents do not challenge the validity of Illinois blue sky and other security acts as applied to federally licensed warehouses), nor to many other regulations that embody exertions of Illinois' police power. But if Illinois may exert her police power with respect to public health and safety as against

federally licensed warehouses at all, presumably she may exert that power as well through the mediacy of her Commerce Commission as through the instrumentality of her board of health, her state constabulary and city police departments or other agencies. Although there might well come a point at which federal approbation of a warehouse as proof against deterioration or corruption of its grain, if such approval were direct and specific, might inhibit state inspection, or a point at which federal authority might conflict with and therefore supersede inconsistent state regulation in respect to any one of the other many phases of the warehouse business, this court, we submit, cannot mark and should not attempt to mark such points in this case.

With respect to financing and securities, it is not suggested that Illinois' blue sky laws are rendered impotent to inhibit an issue of stock or bonds to the public generally, even though such stock and bonds represented investment in or ownership of a federally licensed warehouse. Certainly, Illinois' power over her banks would prevent their lending the public's deposited money improvidently, even though the would-be borrower were a federally licensed warehouse.

But respondents say that *in no instance* may Illinois *through her Commerce Commission* regulate *or even scrutinize with a view to regulation* financial transactions equally important to the warehouseman's financial stability and the public's stake in the warehouse if the transactions in question occur between parent and subsidiary or other affiliated corporations.

These reflections show very plainly that what the plaintiffs really seek is the vindication of abstract principles of immunity and not the invalidation of any specific or parti-

cular act of Illinois' sovereignty with respect to federally licensed warehouses or the Chicago Board of Trade.

The court is not asked to interdict all state regulation of federally licensed warehouses. And any line by which the court might now undertake to partition the domain of regulatory power between state and nation would have to be a line so broad as to be really not a line at all but no more than a general and therefore a vague indication of the bourne between state and federal authority. It is for this reason, and not merely to preserve the amenities of state and federal comity, that Illinois insists that the present case conceives no definitive issues and is therefore quite premature.

If the considerations above developed are well entertained, it follows that this court should not assume that Illinois will act in derogation of federal authority in respect of matters as to which Illinois has, by respondents' own concession, a very considerable measure of residual sovereignty, notwithstanding the acts in question. If the court accedes to the conclusions suggested under this Point, it will be unnecessary to undertake the task which the plaintiffs' suits seek to visit upon the federal judiciary. The cases may and we think should be dismissed and the respondents remitted to appropriate remedies if future acts of Illinois infringe any immunity conferred by the federal laws in question.

II.

The Johnson Act Is Applicable.

Under the Johnson Act (28 U. S. C. A. Sec. 41 (1)) access to the federal courts is forbidden where it is sought to impeach state regulation that affects rates, does not involve interstate commerce, and is susceptible to attack by plain, speedy and adequate remedy in the state courts.

Respondents say that rates are not involved, presumably because they have not been established. But rates have not been established simply because of the pendency of the instant federal judicial proceedings. It would be an anomaly indeed if plaintiffs might sue to enjoin the fixing of rates, *thereby in effect seeking protection of present rates*, and then say that rates are not involved because the proceedings instituted by the plaintiffs have prevented their change.

Respondents concede (or at least do not and cannot challenge) the proposition that the state courts would be open to them. (See Commission's brief in support of petition for *certiorari*, pp. 13-14, citing *Peoples Gas Co.* v. *Slattery*, 373 Ill. 31, and *Sprague, et al.* v. *Biggs*, 390 Ill. 537.)

The only question remaining, then, is whether "interstate commerce" is "involved." That the business of grain warehousing affects interstate commerce is not challenged. But nearly all modern industry and *all* modern public utility operations "affect" interstate commerce. If the Johnson Act is not applicable wherever interstate commerce is "affected," the statute is a practical nullity.

That the business, the activities of which are purely local, as manufacture is local even when the product is destined for interstate commerce, does not "involve" interstate commerce clearly appears from *Munn* v. *Illinois*, 94 U.S. 113. In that case, as the court knows, it was sought to invalidate Illinois regulation fixing grain warehousemen's tariffs on the ground, among others, that the business so far constituted or involved interstate commerce as to be beyond the purview of state regulation. It must be remembered that at the time of *Munn* v. *Illinois*, this court adhered sedulously to the doctrine that where interstate commerce was involved, congressional silence with respect to interstate commerce meant that state legislation was inter-

dicted. Yet this court, though recognizing the interstate implications of the business, held that the business did not so far directly constitute or involve interstate commerce as to forbid the exercise of state legislative authority. If this is so, then certainly interstate commerce is not involved.

III.

Neither present federal regulation of warehouses and of boards of trade nor potential (not actual) conflict between such regulation and state regulation ousts the Illinois Commission of jurisdiction.

All of the participants in the present litigation, including all *amici curiae*, concede that congressional intent, expressed or clearly evinced, is the touchstone of this case.

Let us then undertake to visualize the practical operation of the legislation in question, *first*, as conceived by respondents, and, *second*, as conceived by petitioners.

The Intent of Congress and the Operation of the Act As Conceived by Respondents.

According to respondents, Congress, recognizing that the business of storing grain is quite as vital to the very lives of American citizens as is its transportation, undertook to pre-empt the regulation of this business from the states and to substitute comprehensive regulation for state control. How did Congress, according to respondents, go about the important task that it assumed?

First, it plainly provided that no warehouseman need submit himself to the authority of Congress and the Department of Agriculture at all unless he wished to. But if he did elect to substitute national for state authority over himself, he subjected himself to no comprehensive or in-

tegrated rate making process, submitted to no requirement at all in respect to his charges except that they be not exorbitant, obtained no right to judicial review of any rate that he might charge,* escapes state surveillance but does not submit himself to federal superintendence with respect to transactions among affiliated interests, exempts himself from all state regulation but incurs no penalty for violation of federal regulation at any time that he chooses to abandon his license and return to state superintendence and, in short, *finds a zone of sanctuary where neither state nor federal authority can touch him.*

It is very doubtful whether the act, *as thus construed,* is constitutional. Certainly, no such authority over rates as that given to the Department of Agriculture, which is merely authority to approve the rate of each warehouseman individually, could stand as constitutional if in fact it is a rate making power at all.

The Act as Construed by Petitioners.

We believe that we have demonstrated above that the act *as construed by respondents* is so arrantly unreasonable a means of accomplishing the (supposed and alleged) plenary regulation of the warehouse business that it is probably unconstitutional.

But if the act is understood *not* as an exercise of national sovereignty in pre-emption of the field of state regulation, but merely as a means of enabling those warehousemen who

---

* In the Rice brief it is conclusively demonstrated, contrary to the contentions of respondents, that the federal administrative review act was not even passed until thirty years after the adoption of the Federal Warehouse Act, and, moveover, that that act applies only to federal administrative procedures where the act authorizing such procedures affords and requires notice, hearing on evidence, findings, and the like.

so elect to obtain federal credentials for their warehouse receipts, the act immediately becomes understandable, reasonable and eminently sensible.

As we read the act, it means that if a warehouseman desires the prestige, accreditation and sanction of federal approbation of his business, he may submit his business, including his rates of charge, mode of storage and the text and import of the receipts which he issues, to federal supervision. Such voluntary submission to federal authority may and doubtless will give him a competitive advantage over those who do not choose to seek the hallmark of federal approval upon their business. But such advantage is entirely legitimate. His competitors can either obtain a like advantage or have not earned the *signum* of approval implied by federal licensure.

In short, if the act is conceived not as an attempt to pre-exempt without supplanting state legislation, but merely as part of a national policy such as that implict in a federal Bureau of Standards, the act immediately becomes a congressional measure distinguished by its common sense.

Now we say that this is true notwithstanding that the authority of the Secretary of Agriculture shall be "exclusive." *For the Secretary has no authority except the limited authority envisioned by the construction for which we contend.* With respect to those particular matters in which he may act, including, perchance, the disapproval of state action when such action is actually in conflict with the federal act or regulations adopted under it, his authority will be supreme.

Mindful that this court will have already perused hundreds of pages of briefs by the time that it reaches this one, we are anxious to keep the tenor of the instant presentation that of a reply rather than repetition of arguments

already made. We do, however, suggest, even though the suggestion is in some measure repetitive, that *Cloverleaf Butter Co.* v. *Patterson*, 315 U.S. 148, which the Circuit Court of Appeals said

"On its facts * * * is most similar to the instant one", is not nearly as incisive in its parallel as is *Terminal Ass'n.* v. *Brotherhood of Railway Trainmen*, 318 U.S. 1, where a regulation of the Illinois Commerce Commission commanding petitioner railroad to run cabooses on interstate trains was sustained, although this court recognized that the regulation might conflict with contrary regulation by the Interstate Commerce Commission and although the court also observe that the safety of employees, the protection of the public, and all other public interests sought to be served by the state regulation in question had been the subject matter of direct congressional action.

Respondents find some anomaly in the fact that the Illinois Commission may prescribe a rate which the Secretary of Agriculture may disapprove. The same thing has long been true in the field of railroad rates. Under section 13 of the Transportation Act of 1920, the Interstate Commerce Commission may at any time disapprove and invalidate a rate fixed by a state commission—let us say, for example, a rate for the transportation of grain from one warehouse to another. How, then, can there be any incongruity or solecism in a conception of an intent of Congress that would make rates fixed generally by state administrative process effective until such time as they were disapproved by federal action? We may note, in passing, too, that the Interstate Commerce Commission is authorized to and does "cooperate" with state commissions in the matter of fixing rates for intrastate commerce where interstate commerce will be affected.

IV.

The Commodities Exchange Act does not exempt the Board of Trade from investigation or the incidental regulatory process contemplated by the Commission.

In view of the position taken by the Solicitor General of the United States, we feel that little need be said in specific reply to the arguments on behalf of the Board of Trade.

If we are correct in our construction of the Federal Warehouse Act, the Illinois Commission has authority to investigate and to regulate, to an extent that cannot be measured *ex hypothesi* in the instant case, federally licensed warehouses. Even if this court should sustain the Circuit Court of Appeals in its view that *federally licensed* warehousemen are exempt from the Illinois Commission's authority, Illinois' authority would still be plenary with respect to warehousemen who have *obtained no federal license.* It would seem too plain for argument that if the Commission's regulations (whether in respect to all warehousemen or with respect to only those not federally licensed) are to prescribe the kind of warehouses in which is stored the grain in which trading occurs on the floor of the exchange, the Board of Trade will necessarily be affected. Therefore, far from the Board's being prejudiced, its constitutional rights are scrupulously preserved by permitting it to appear, cross examine witnesses, and introduce its own proof in any hearing which must necessarily affect it.

Usually, when legitimate regulation is contemplated (no one questions Illinois' authority over non-licensed warehouses), the complaint is made that third parties who are vitally affected by the regulation were *not* given an oppor-

tunity to be heard. We find it strange in the extreme that inasmuch as regulation is imminent, at least with respect to non-licensed warehouses, and inasmuch as such regulation must substantially affect the business transacted on the Chicago Board of Trade, the Board should complain that it is given an opportunity to participate in the proceedings contemplating such regulation.

In any event, considerations similar to those developed with respect to the warehousemen are appropriate in the case of the Board of Trade. Surely, there is no warrant for the position that merely because the Board of Trade is federally recognized as a "commodity exchange" its activities with respect to warehousemen (who are not commodity exchanges and many of whom have no federal licenses) are immune from state regulation.

Conclusion.

We respectfully submit that the judgment of the Circuit Court of Appeals should be reversed.

We think that the judgment should be reversed without decision of the inherently nebulous questions of state *versus* federal control that petitioners seek to propound abstractly and in the absence of specific state action.

But if this court finds justiciable controversy upon the present records, then we think that neither the Federal Warehouse Act nor the Commodity Exchange Act should be held to supersede the authority of the Illinois Commerce Commission in the premises.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
208 S. LaSalle St., Chicago 4, Illinois,
Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General.
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM
DANIEL F. RICE & CO., A PARTNERSHIP

IRVIN ROOKS,

LEE A. FREEMAN,

Attorneys for Daniel F. Rice, Joseph J. Rice, William F. Eneley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

February 26, 1947.

LINCOLN PRINTING COMPANY, CHICAGO, WABASH 1094

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM
DANIEL F. RICE & CO., A PARTNERSHIP

MAY IT PLEASE THE COURT:

Pursuant to the suggestion of the Court at the time of oral argument in the above entitled cause, there is presented

herewith a summary of state regulation of public warehouses at present and prior to 1931.

Respectfully submitted,

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership, Petitioners.

February 26, 1947.

STATE WAREHOUSE REGULATION

SUMMARY

	At Present	1931 and Prior
States providing some form of warehouse regulation	41	40
States regulating rates	32	31
States regulating discrimination	17	17
States regulating services and facilities	20	19
States regulating security issues and financial transactions	6	5

The survey does not include an investigation of state statutes providing separately for the supervision over abandonment of service or prohibiting warehousemen from exercising the dual and conflicting function of grain merchandiser and dealer.

State	Present Statutory Citation	Type of Warehouse	Date of Enactment	Subject Matter Regulated: Rates	Discrimination	Service and Facilities	Security Issues, Financial Transactions
Alabama	Code (1940) Tit. 2 Sec. 578	Cotton	1927			x	
Arizona	Code (1939) Sec. 52-901 to 52-905	Cotton, Wool	1927				
Arkansas	Dig. Stat. (Pope, 1937) Sec. 14389	Grain and Others	1917	x		x	
California	Gen. Laws (Deering, 1937) Act 6386, Secs. 32; 19; 13; 35; 36; 51-52½	Grain and Others	1915	x	x	x	x
Delaware	Rev. Code (1935) Ch. 25, Sec. 831 et seq.	Food	1915				
Georgia	Code (1933) Sec. 5-312	Cotton	1918	x			
Idaho	Code Ann. (1932) Secs. 59-502-3; 59-315; 59-302; 59-508	Grain	1913	x	x	x	
Illinois	Ill. Rev. Stat. (1945) Ch. 111⅔; Secs. 1-84	Grain and Others	1871[1] 1913	x	x	x	x
Indiana	Stat. Ann. (Burns, 1933) Secs. 67-512; 67-521; 67-306	Tobacco Grain	1857 1935	x	x		
Iowa	Code (1946) Secs. 543.28; 543.27; 543.2	Grain and Others	1924	x	x	x	
Kansas	Gen. Stat. Ann. (1935) § 34-235	Grain	1907	x			
Kentucky	Rev. Stat. (1944) § 359.140; 248.350; 248.360; 251.020	Grain, Tobacco	1892[2]	x	x	x	
Louisiana	Gen. Stat. (Dart's, 1939) § 9935; 9934	Grain and Others	1921	x		x	
Maine	Rev. Stat. (1944) Ch. 40, § 16-36; 37-9; 47; 42-6; 59-61	Grain and Others	1913	x	x	x	x

State	Present Statutory Citation	Type of Warehouse	Date of Enactment	Subject Matter Regulated			
				Rates	Discrimination	Service and Facilities	Security Issues, Financial Transactions
Maryland	Code Ann. (Flack, 1939) Art. 48, Sec. 43	Tobacco	1872				
Massachusetts	Ann. Laws (1933). Ch. 105, Sec. 1 et seq.	Goods, wares & merchandise	1860				
Michigan	Stat. Ann. (1937) Ch. 211 § 22.349	Grain and Others	1929	x			
Minnesota	Stat. (1941) § 231.15; 231.14; 231.02	Grain and Others	1915	x	x	x	x
Missouri	Rev. Stat. Ann. (1944) § 14685.24; 14685.7	Grain and Others	1913	x		x	
Montana	Rev. Code (1935) § 3579; 3585; 3592.6	Grain	1919[3]	x	x	x	
Nebraska	Rev. Stat. (1943) § 88-209	Grain and Others	1931	x	x		
Nevada	Comp. Law (1929) § 6114; 6116; 6117	Grain and Others	1919	x	x	x	
New Hampshire	Rev. Laws (1942) Ch. 205 Sec. 1 et seq.	Goods, wares & merchandise	1917				
New Jersey	Stat. Ann. Sec. 24-9-8	Food	1916			x	
New Mexico	Stat. Ann. (1941) § 53-901 et seq.	Grain	1941				
New York	Laws of N. Y. (Thompson, 1939) Gen. Bus. Law, Sec. 396	Grain	1903	x			
North Carolina	Gen. Stat. (1943) Sec. 106-452	Tobacco	1895	x			
North Dakota	Rev. Code, Sec. 60-0217; 60-0220	Grain and Others	1895[4]	x	x		
Ohio	Gen. Code Ann. (Page, 1937) § 6058	Tobacco	1881	x			
Oklahoma	Stat. Ann. (1938) Tit. 81 Sec. 13	Grain	1899	x	x		

State	Present Statutory Citation	Type of Warehouse	Date of Enactment	Subject Matter Regulated: Rates	Discrimination	Service and Facilities	Security Issues, Financial Transactions
Oregon	Comp. Laws (1940) Secs. 60-302; 60-306; 60-317	Grain and Others	1917	x	x		
Pennsylvania	Pa. Stat. (Purdon, 1936) Tit. 67 § 252 Tit. 31 § 952-3	Grain and Others	1869			x	x
South Carolina	Code of Laws (1942) Sec. 6387 Sec. 7197	Cotton Tobacco	1876 1896	x			
South Dakota	Code (1939) Sec. 60.0311	Grain and Others	1919	x			
Tennessee	Code Ann. (Williams, 1934) § 6498; 6481	Tobacco	1870[5]	x		x	
Texas	Stat. (Vernon, 1936) Art. 5601	Grain and Others	1917	x			
Utah	Code Ann. (1943) § 76-3-2; 76-3-3; 76-3-7; 76-4-7; 76-4-28; 76-4-8	Grain and Others	1917	x	x	x	x
Virginia	Code (1942) § 1381; 1384	Tobacco	1887	x		x	
Washington	Rev. Stat. Ann. (Remington, 1932) § 6987; 6999; 11569-3	Grain and Others	1919[6]	x	x	x	
Wisconsin	Stat. (1945) Sec. 126. 18	Grain and Others	1905	x	x		
Wyoming	Rev. Stat. (1931) § 1307; 1304; 5.602 et seq.	Grain and Beans	1931[7]	x		x	x

[1] The Illinois Grain Warehouse Act was enacted in 1871. In 1913, the Illinois Public Utility Act was passed regulating warehouses as public utilities. This latter statute was reenacted in 1921.
[2] Sections regulating rates added in 1893. Service regulation added in 1938.
[3] Sections regulating rates added in 1921. Service regulation added in 1927.
[4] Section prohibiting discrimination added in 1927.
[5] Section regulating rates added in 1889.
[6] Section regulating services added in 1933.
[7] Sections regulating rates, discrimination and services by bean warehouses added in 1939.

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 27 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION TO THE COURT OF CHANGES IN DESIGNATION OF PARTIES

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

February 26, 1947.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 4004.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470, 472

ILLINOIS COMMERCE COMMISSION, et al., etc.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION TO THE COURT OF CHANGES IN DESIGNATION OF PARTIES

Now come Irvin Rooks and Lee A. Freeman, attorneys for petitioners in the above entitled cause No. 470, now pending and undetermined in this court upon writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and respectfully suggest to the court that one of the co-partners of the firm of Daniel F. Rice & Co., to-wit: Walter T. Rice, died on June 8, 1946, and that said firm has been reconstituted with the addition of Joseph A. Fagan as a partner and member thereof, so that the proper designation of said petitioners in No. 470 is now:

> Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership.

It is suggested that said change of designation be noted of record in further proceedings in the above entitled causes, such change, however, not to affect any of the questions or controversies presented by the record herein, and said questions and controversies to stand for the decision of this court the same as if said change of designation had not been made.

And petitioners further suggest that respondent Great Lakes Elevator Corporation, which, as one of the parties plaintiff in the cause before the United States District Court for the Northern District of Illinois, Eastern Division, grounded its prayer for injunctive relief upon the possession of a license issued September 28, 1942, under the United States Warehouse Act (7 U. S. C., Sec. 241, *et seq.*), abandoned its service as a warehouse and public storer of grain for hire on or about June 30, 1945, and shortly thereafter surrendered the aforesaid license. The public grain warehouse and elevator formerly operated by said Great Lakes Elevator Corporation is no longer in existence. As a consequence, said Great Lakes Elevator Corporation should be dismissed as a party respondent herein, such dismissal not to affect the decision of this court with respect to the other parties respondent.

Respectfully submitted,

Irvin Rooks

Irvin Rooks)

Lee A. Freeman

Lee A. Freeman

Attorneys for Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership.

February 26, 1947.

FULL COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 470 and 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI.

FRED C. WATKINS,
CHARLES F. MEYERS,
Attorneys for Respondents, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company.

FLOYD E. THOMPSON,
FREDERICK MAYER,
A. L. RITTENBERG,
Attorneys for Respondent, Continental Grain Company.

CARL MEYER,
LEO F. TIERNEY,
LOUIS A. KOHN,
Attorneys for Respondents, Rosenbaum Brothers and Carroll, Incorporated.

INDEX.

	PAGE
Opinion Below	1
Question Presented	2
Statement of the Case	2
Argument	5
A. A decision of the Circuit Court of Appeals sustaining the equitable jurisdiction of the District Court was correct and not in contravention of the Johnson Act	5
B. The Circuit Court of Appeals properly construed the United States Warehouse Act in accordance with the clear provisions of the 1931 amendments thereto and the interpretation thereof in Cloverleaf Butter Co. v. Patterson	6
Conclusion	13

Table of Cases.

A. F. of L. v. Watson, ... U. S. ....., 66 S. Ct. 761 (1946) 6

Cf. Tully v. Interstate Natural Gas Co., Inc., 82 F. 2d 145 (C. C. A. 5, 1936) 6

Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 (1942) 11

Farmers Cooperative Association, ... S. D. ....., 8 N. W. (2d) 557 (1943) 12

First Iowa Hydro-Electric Corporation v. Federal Power Commission, ... U. S. ....., 66 S. Ct. 906 (1946) 13

Independent Gin & Warehouse Co. v. Dunwoody, 44 F. 2d 1 (C. C. A. 5, 1930) 7

Merchants Exchange v. Missouri, 248 U. S. 65 11

Public Utilities Commission of Ohio, et al. v. United States Fuel Gas Co., 317 U. S. 456 (1943) 6

Statutes and Committee Reports.

Commodity Exchange Act (7 U. S. C. 7a(7)) 11

U. S. Warehouse Act (7 U. S. C. Sec. 241-273) 3, 6, 7

Regulations promulgated by Secretary of Agriculture under United States Warehouse Act, 7 Code of Federal Regulations, Section 102, et seq. 3

Johnson Act, 28 U. S. C. Sec. 41(1) 5

H. Rept. 4, 71st Cong., 1st Sess., p. 4 8

S. Rept. 1775, 71st Cong., 3rd Sess., p. 2 ..... 9, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 470 and 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioner,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI.

Respondents, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Incorporated file this brief in opposition to separate petitions for certiorari filed in cases bearing numbers 470 and 472.

I.

Opinion.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is reported in 156 F. 2nd 33 (June 7, 1946). (R. 106.)

II.

The Question Presented.

The record clearly shows that the respondents' federally licensed warehouses are an integral part of the vast flow of grain in and out of the Chicago market. (R. 59-76.) The power of Congress to exercise exclusive control over respondents is conceded.

The basic issue here is whether Congress has exercised such power by enactment of the United States Warehouse Act and amendments thereto so as to preclude the State of Illinois from regulating such warehouses with respect to the matters sought to be invoked in the instant case.

Respondents' position is that the scope and express provisions of the United States Warehouse Act, as amended, clearly indicate the intent of Congress to pre-empt and occupy the field of regulation of federally licensed warehouses so as to preclude such state regulation. We are dealing with actual invasion of the federal domain and not merely a hypothetical intrusion.

III.

Statement of the Case.

The present litigation arose out of a complaint filed by Daniel F. Rice and Company, a partnership, before the Illinois Commerce Commission on July 28, 1944, entitled "*Daniel F. Rice and Company* v. *Chicago Grain Corporation, et al.*" (R. 16-24.) That complaint sought to invoke the Illinois Commerce Commission's regulatory powers over the Board of Trade of the City of Chicago, certain warehousemen holding state licenses and respondents, all of whom hold federal grain warehouse licenses

issued pursuant to the terms of the United States Warehouse Act. (7 U. S. C. Sec. 241, *et seq.*)

Respondents have been conducting their respective warehouse businesses in the Chicago area under the sole authority of such federal licenses for many years. (R. 60-75.)

The Rice complaint charged in paragraph 13 thereof (R. 21-22) that all or some of the respondents had violated the laws of the State of Illinois in the following particulars: Charging unjust, unreasonable and discriminatory rates, pursuing discriminatory practices, operating without a State license, failing to secure Commission approval of contracts and security issues, mixing public grain with grain of different grades, failing to file, print and publish schedules of rates and charges and abandoning service without Commission approval.

The United States Warehouse Act provides for the regulation of warehouses securing a federal license under the Act. Broad regulatory powers over such warehouses are conferred upon the Secretary of Agriculture. These powers expressly or by implication embrace all phases of regulation sought to be invoked under state authority by the Rice Complaint. Section 28 of said Act, (7 U. S. C.) Sec. 268 authorizes the Secretary of Agriculture "to make all rules and regulations as he may deem necessary for the efficient execution of the provisions of the Act". Detailed regulations have been adopted pursuant to this statutory authority. They are set forth in 7 Code of Federal Regulations, Sec. 102, *et seq.*

Respondents moved to dismiss the Rice proceedings on the ground that the United States Warehouse Act had preempted and occupied the field of regulation of federally licensed warehouses and had superseded any authority of the Commission with respect to the matters involved in the Rice complaint. (R. 25-26.)

The Commission denied respondents' motion and set the cause for hearing on October 24, 1944. (R. 27.)

On October 20, 1944, respondents filed their verified complaint for injunctive relief in the United States District Court against the Rice defendants, the Illinois Commerce Commission, its Chairman and members and the Attorney General of Illinois. (R. 2-28.)

Petitioners filed motions and an answer in the nature of a demurrer to respondents' verified complaint. (R. 36-48.)

The District Court entered an order denying all injunctive relief sought by respondents and dismissed their case. (R. 91-93.) Appeals were taken by respondents to the Circuit Court of Appeals for the Seventh Circuit. On June 7, 1946, that Court entered an order reversing the District Court with directions to overrule petitioners' motion to strike and to proceed in accordance with the views expressed in the opinion of the Circuit Court of Appeals, (R. 126) to the effect that exercise of jurisdiction by the Commission over the matters before it "plainly and palpably infringes," the policy of Congress or presents an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (R. 113.)

IV.

ARGUMENT.

A.

The Decision of the Circuit Court of Appeals Sustaining the Equitable Jurisdiction of the District Court Was Correct, and Not in Contravention of the Johnson Act.

Although the Rice petitioners (Case No. 470), have not made any contentions in their petition with regard to the jurisdiction of the District Court, the Attorney General in the petition of the Illinois Commerce Commission, *et al.*, (Case No. 472) persists in urging two of the several objections made by him in the Circuit Court of Appeals to the jurisdiction of the District Court.

His principal contention on this point now is that under the provisions of the Johnson Act Amendment to the Judicial Code, 28 U. S. C., § 41(1), the District Court should not have entertained the complaint in the instant case. Inasmuch as that Act deprives the District Court of jurisdiction to enjoin the enforcement of the orders of state administrative bodies *only* in cases where jurisdiction is based "solely upon the ground of diversity of citizenship or the repugnance of such order to the Constitution of the United States", it is clearly inapplicable to the instant case. The complaint, as demonstrated by the opinion of the Circuit Court of Appeals (156 F. (2d) 36; R. 111) is not based on either of these grounds; it is solely predicated on the theory that the federal statutes involved have superseded the Illinois laws sought to be enforced, and jurisdiction is invoked because the laws of the United States are involved

(Para. I, Complaint, Rec. 4). The Attorney General's argument on this point is accordingly without merit.

His other argument to the effect that the District Court should not have exercised equitable jurisdiction in this case can be summarily disposed of by a reference to decisions of this court which recognize the propriety of the granting of equitable relief by federal courts in cases of this kind. *Public Utilities Commission of Ohio, et al.* v. *United States Fuel Gas Co.*, 317 U. S. 456 (1943); *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942); *A. F. of L.* v. *Watson*, ... U. S. ....., 66 S. Ct. 761 (1946); Cf. *Tully* v. *Interstate Natural Gas Co., Inc.*, 82 F. 2d 145 (C. C. A. 5, 1936).

B.

The Circuit Court of Appeals Properly Construed the United States Warehouse Act in Accordance With the Clear Provisions of the 1931 Amendments Thereto, and the Interpretation Thereof in Cloverleaf Butter Co. v. Patterson, 315 U. S. 148.

Consideration of the United States Warehouse Act and its legislative history discloses that Congress intended to preempt the field so as to preclude the state regulation of federally licensed warehouses sought to be invoked by petitioners.

The Act (set forth in Appendix A, Rice Petition, Case No. 470) is broad in its scope, and embraces, among others, the following subjects: licensing (Secs. 4, 5, 9); rates and charges (Sec. 25); revocation of license for unreasonable charges or violation of any terms of the Act (Sec. 25); requirement of a bond for faithful performance of obligations under the Act (Sec. 7); license and inspection fees; discrimination (Sec. 13); approval of certain mingling of grain (Sec. 16); form and contents of warehouse receipts

(Sec. 18); records and reports (Sec. 23); examination of stored products (Sec. 24); publication of investigations (Sec. 26); examination of books and records (Sec. 27). It further grants the Secretary of Agriculture exclusive power over federal licensees (Sec. 29), and the power to make rules and regulations for the efficient execution of provisions of the Act (Sec. 28).

Thus, the Act together with the detailed regulations, promulgated under the authority of the Act (7 Code of Federal Regulations, Section 102, *et seq.*) constitute a broad and well-rounded system of regulation and shows the definite purpose and design of Congress to preempt the field of regulation involved here with respect to warehousemen licensed under that Act.

The language used in Section 29 and the legislative history of that Section, afford conclusive evidence that Congress intended to preempt the field here in controversy. Prior to its amendment in 1931, Section 29 read as follows:

> "Nothing in this chapter shall be construed to conflict or to authorize any conflict with or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such state laws in such States and through such cooperation to secure the enforcement of the provisions of this chapter. * * *" (7 U.S.C. § 269.)

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 44 F. 2d 1 (C.C.A. 5th, 1930), cotton warehousemen licensed under the United States Warehouse Act sought to enjoin the enforcement of the Alabama law providing for licensing and regulating such warehousemen, alleging that enforcement of such provisions would be a burden on inter-

state commerce. The court denied the injunction, holding that Section 29 of the Act as then in force did not indicate any intention of Congress to exclude state regulation of such warehousemen. Section 29 of the United State Warehouse Act (7 U.S.C. § 269) was subsequently amended in 1931 to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; *but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect. * * *" (Emphasis supplied.)

This amendment clearly indicates the intention of Congress to vest jurisdiction of federally licensed warehouses in the Secretary of Agriculture to the exclusion of the state authorities, and having been adopted in the wake of the *Dunwoody* case, *supra*, it is clear that it was designed to obviate the effect of that case, and to thereby avoid confusion and inconsistencies which would be inevitable under the resulting "dual system of futile duplication of two authorities over the same subject matter." See, *First Iowa Hydro-Electric Corporation* v. *Federal Power Commission*, ___ U. S. ___, 66 S. Ct. 906 (1946), involving a similar question under the Federal Power Act. That this was the purpose of Congress in adopting the 1931 amendments, is shown by the Reports of the House and Senate Committees with reference thereto.

In the House Committee report (H. Rept. 4, 71st Cong., 1st Sess., p. 4) it is stated:

> "Under Section 29 (Section 269 of the United States Code) of the law as at present, if the Federal Act in any way conflicts with the State law, the Fed-

eral law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. * * * To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom."

The following appears in the Senate Committee report (S. Rept., 1775, 71st Cong., 3rd Sess., p. 2):

"Section 29 of the act now provides 'That nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen,' etc. The effect of this wording is to make the Federal act subservient to state acts wherever there is a conflict. As might be expected there are conflicts between State laws and the federal act. Since the law specifically makes the federal act subservient to State laws in case of conflict, this feature militates against the full value of federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the federal act independent of State laws. In other words, it would place the federal act on its own bottom. It does not change the permissive feature of the federal act. No warehouseman is obliged to operate under the federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the federal act, and *if it is decided to secure a license under the federal act then the warehouseman would be authorized to operate without regard to state acts and be solely responsible to the federal act.* Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the federal act may be negatived by state legislation or regulation, a banker

is obliged to follow closely the laws of the 48 different states, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. *The suggested amendment will place the federal act independent of State acts* and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. In other words, it leaves it with the warehousemen to decide whether they wish to operate under the state or federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency." (Emphasis supplied.)

This intention of Congress is also demonstrated by the amendment to Section 6 of the United States Warehouse Act (7 U.S.C. § 247), which accompanied the amendment of Section 29.

Prior to its amendment, Section 6 required, as a condition to securing a federal license, that each licensee give a bond "to secure the faithful performance of his obligations as a warehouseman *under the laws of the State, district or territory* in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder * * *." The amendment, however, eliminated the requirement that the bond be conditioned upon *compliance with the laws of the State, district or territory in which the warehouse was conducting business*, and provided merely that the requirement that the bond be conditioned upon compliance with the federal Act and federal regulations thereunder. That this change to Section 6 was also in furtherance of the new concept of Section 29 is borne out by the statement in the Senate Committee Report 1775, 71st Congress, Third Session, Page 2, "again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

The removal by the amendment to Section 6, of the

necessity of compliance with state law was consistent only with the purpose and design of Congress to give effect to the amendment to Section 29, under which exclusive control over federally licensed warehousemen was vested in the federal government.

Pursuing this clear-cut policy of divesting state authorities of control over federal warehouses, Congress in 1936 provided in Section 5a of the Commodity Exchange Act that contract markets, such as the Chicago Board of Trade, shall require that receipts issued under the United States Warehouse Act

> "* * * be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and *notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law.*" (Emphasis supplied.) (7 U. S. C. § 7a(7).)

That the 1931 amendments had the effect of foreclosing state action in the instant case was clearly recognized in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942). The court in footnote 5 (p. 155) cited *Merchants Exchange* v. *Missouri*, 248 U. S. 65, as an example of an instance where the state was free to legislate upon matters not preempted by the federal government. This case dealt with section 29 of the United States Warehouse Act as it read prior to the 1931 amendment. The court then, in footnote 6 (p. 156) of the *Cloverleaf* case, cited Section 29 as amended in 1931 as an illustration of the exercise by Congress of its power so as to supersede state regulation, and make federal regulation exclusive. As stated by the Circuit Court of Appeals, 156 F. (2d) 33 at p. 39 (R. 115-6) in this connection:

> "Thus we have the court in the same opinion treating Section 29 before it was amended as an illustration

> of dual authority, and Section 29 after it was amended as providing for sole authority of the federal government."

This construction of the 1931 amendment to the United States Warehouse Act was also adopted by the Supreme Court of South Dakota in 1943, in *In re Farmers Cooperative Association*, ... S. D. ....., 8 N. W. (2d) 557 (1943). In that case, the court held that the South Dakota statute (comparable to Illinois laws sought to be enforced here) was in conflict with the United States Warehouse Act, and because of the 1931 amendment to that act federally licensed warehousemen were not subject to State Regulation. The assertion (Rice Petition p. 7) that "This is a case of first impression" is, therefore, incorrect.

Petitioners would have the court believe that the decision of the Circuit Court of Appeals will render ineffective state regulation of warehouses under the state laws. However, as was clearly pointed out in the opinion below (156 F. 2d, at p. 40, R. 117), state regulation is left unimpaired as to warehouses not licensed under federal law, and "no vacuum is created". Petitioners Rice, *et al.* further assert in their brief (p. 10) that "no such federal regulation and control has been exercised in the thirty years that the federal statute has been in effect." This statement is altogether without basis, and is contrary to the record (R. 65, 67, 72, 75). As stated in the opinion below (156 F. (2d), p. 36, R. 110):

> "* * * each of the plaintiffs has filed with the secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture."

Such a statement also entirely overlooks the fact that the Secretary of Agriculture pursuant to Sec. 28 of the Act

has adopted comprehensive regulations governing the operation of federally licensed warehouses. (7 Code of Federal Regulations, Section 102 *et seq.*)

The decision of the Circuit Court of Appeals in this case will not have the dire consequences conjured by petitioners. On the contrary any other conclusion would result in conflicts, between federal and state authority, and confusion and embarrassment inherent in dual regulation, and defeat the clearly expressed intention of Congress that only one authority should control and regulate federally licensed warehouses.

In this connection see *First Iowa-Hydro-Electric Cooperative* v. *Federal Power Commission*, ... U. S. ....., 66 S. Ct. 906, *supra*, where, in holding that an applicant need not first obtain a permit under state law as a condition precedent to the issuance of a federal license for the same project under the Federal Power Act, this court stated that to impose such requirement would vest in state authorities "a veto power over the federal project", and that

> "Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the State the 'comprehensive' planning which the Act provides shall depend upon the judgment of the Federal Power Commission or other representatives of the Federal Government."

Conclusion.

In view of the clear provisions of the United States Warehouse Act as amended and the manifest intention of Congress demonstrated in the 1931 amendments thereto, as recognized by this court in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, it is submitted that no grounds ap-

pear for allowing the Writs of Certiorari in the instant cases.

Chicago, Illinois,
Sept. 26, 1946.

Respectfully submitted,

FERRE C. WATKINS,
CHARLES F. MEYERS,
Attorneys for Respondents, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company.

FLOYD E. THOMPSON,
FREDERICK MAYER,
A. L. RITTENBERG,
Attorneys for Respondent, Continental Grain Company,

CARL MEYER,
LEO F. TIERNEY,
LOUIS A. KOHN,
Attorneys for Respondents, Rosenbaum Brothers and Cargill, Incorporated.

FILE COPY

Office - Supreme Court, U. S.
FEB 6 1947
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 470

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioner,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

FERRE C. WATKINS,
CHARLES F. MEYERS,
Attorneys for Respondents Great Lakes Elevator Corporation, State Elevator Corporation, Norris Grain Company, Stratton Grain Company
FLOYD E. THOMPSON,
FREDERICK MAYER,
A. L. RITTENBERG,
Attorneys for Respondent Continental Grain Company
CARL MEYER,
LEO F. TIERNEY,
LOUIS A. KOHN,
Attorneys for Respondents Rosenbaum Brothers and Cargill, Incorporated

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	4
Statement of the Case	5
Complaint	5
Motion for Preliminary Injunction and Affidavits in Support Thereof	8
Summary of Argument	9
Argument:	
I. The District Court had Jurisdiction to Entertain the Complaint Herein	11
II. Respondents' Warehouses are Instrumentalities of Interstate Commerce	13
III. The 1931 Amendments to the United States Warehouse Act Show Conclusively that Federally Licensed Warehouses Were Not to be Subject to any System of State Regulation	15
Cases Cited by Petitioners are readily distinguishable	26
IV. To Grant the Relief Sought Before the Illinois Commerce Commission Would Prevent the Attainment of the Purposes and Objectives of the United States Warehouse Act	31
A. The Rates and Charges of a Federally Licensed Warehouseman are Subject to the Exclusive Jurisdiction of the Secretary of Agriculture	36

B. The Secretary has Exclusive Jurisdiction Over Storage Rates on Grain Stored for the Federal Government 42
C. The Secretary has Exclusive Jurisdiction over the Discriminatory Charges and Practices Set Forth in the Rice Complaint 44
D. Federally Licensed Warehousemen May Issue United States Warehouse Receipts Showing themselves as Owners of Grain Stored in their Own Warehouses 47
E. Regulation of the Safety of Respondents' Elevators and Storage of Grain Therein is Subject to Exclusive Jurisdiction of the Secretary 51
F. State Control over Respondents' Contracts and Security Issues would Hamper the Administration of the United States Warehouse Act 54
G. Petitioners concede the Secretary's Exclusive Jurisdiction over Filing and Publishing of Charges 56
H. A Federal Warehouseman Need not Secure State Consent to Abandon his Warehouse.... 57
I. A Federally Licensed Warehouseman may operate without a State License 58
Conclusion 59

APPENDIX.

Statements of Representative Lever, (Vol. 53, Cong. Rec. Pt. 6, pp. 5924-5925, p. 7085) 61, 63
Senate Committee Report (1931) S. Rep. 1775, 71st Cong. 3rd Sess. 64
House Committee Report (1930) H. Rept. 4, 71st Cong. 1st Sess. 69
United States Warehouse Act, 7 USC § 241, et seq. and Regulations thereunder ..... attached

CITATIONS.

Cases.

Albers v. Lamson, 380 Ill. 35 49

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740 28

Atchison, Topeka and Santa Fe Railroad Company v. Railroad Commission, 283 U. S. 380 53

Bacon Grain Company v. City of Chicago, 325 Ill. App. 245, 59 N. E. 2d 689 3

Case v. Bowles, 327 U. S. 92..... 12

Charleston and Western Carolina Railway Co. v. Varnville Furniture Co., 237 U. S. 597..... 24

Chicago Board of Trade v. Olson, 262 U. S. 1..... 14

Cloverleaf Butter Company v. Patterson, 315 U. S. 148 .....12, 19, 32, 34, 35

Currin v. Wallace, 306 U. S. 1.....14, 26, 34

Davies Warehouse Company v. Bowles, 321 U. S. 144.. 14

Dickson v. Uhlmann Grain Co., 288 U. S. 188..... 49

Emergency Fleet Corp. v. Western Union, 275 U. S. 415 43

Ex Parte Bransford, 310 U. S. 354..... 12

Ex Parte Buder, 271 U. S. 461..... 12

Ex Parte Hobbs, 280 U. S. 168..... 12

Farmers Grain Company v. Langer, 273 F. 635, affirmed 258 U. S. 50 50

First Iowa-Hydro Elec. Corp. v. Federal Power Commission, ... U. S. ...., 66 Sup. Ct. 906.....25, 30, 35

General Shale Products Corp. v. Struck Construction Company, 37 F. Supp. 598 43

Girand v. Kimball Milling Company, 116 Fed. (2d) 999 14
Gulf, Colorado and Santa Fe Railway Company v. Hefley, 158 U. S. 98 40
Hannah v. People, 198 Ill. 77 47
Hill v. Florida, 325 U. S. 538 33
Hines v. Davidowitz, 312 U. S. 52 31
In re Farmers Cooperative Association, 8 N. W. 2nd 557 (S. D.) 21, 59
Independent Gin and Warehouse Co. v. Dunwoody, 40 F. 2nd 1 17
Interstate Commerce Commission v. Cincinnati, etc., Railway Company, 167 U. S. 479 39
Kelly v. Washington, 302 U. S. 1 ..... 22, 27
Lemke v. Farmers Grain Company, 258 U. S. 50 ..... 12, 14
Macauley v. Waterman Steamship Corp., 327 U. S. 540 17
Merchants Exchange v. Missouri, 248 U. S. 365 19
Minnesota ex rel. Whipple v. Martinson, 256 U. S. 41 .. 49
Missouri Pacific Railroad Company v. Porter, 273 U. S. 341 49
Mulford v. Smith, 307 U. S. 38 14
Munn v. Illinois, 94 U. S. 113 14
Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41 .. 17
Napier v. Atlantic Coast Line R. R. Co., 272 U. S. 605. 24
Natural Gas Pipe Line Co. v. Slattery, 302 U. S. 300 ... 12
New York Central R. R. Co. v. Winfield, 244 U. S. 147. 24
Oregon-Washington Railroad and Navigation Company v. State of Washington, 270 U. S. 87 55
Penn Dairies, Inc. v. Milk Control Commission, 318 U. S. 261 34

Prigg v. Commonwealth of Pennsylvania, 41 U. S. (16 Pet.) 539 23
Public Utilities Commission of Ohio v. United Fuel Gas Co., 317 U. S. 456 13
Query v. United States, 316 U. S. 486 12
Savage v. Jones, 225 U. S. 501 28
Shafer v. Farmers Grain Co., 268 U. S. 189 14
Southern Railway Company v. Railroad Commission of Indiana, 236 U. S. 439 23
Stafford v. Wallace, 258 U. S. 495 14
Swift and Co. v. United States, 196 U. S. 375 14
Terminal Railroad Association v. Brotherhood of Railroad Trainmen, 318 U. S. 1 28
Texas and Pacific Railway Company v. Abilene Cotton Oil Company, 204 U. S. 426 41
Texas and Pacific Railway Company v. Mugg, 202 U. S. 242 41
Townsend v. Yeomans, 301 U. S. 441 26
Union Brokerage Co. v. Jenson, 322 U. S. 202 27
United States v. Hastings, 296 U. S. 187 20
Welch Co. v. New Hampshire, 306 U. S. 79 29
Wickard v. Filburn, 317 U. S. 111 14

FEDERAL STATUTES.

Administrative Procedure Act, Pub. Law, 404, 79th Cong. 60 Stat. 237
5 U. S. C. § 1001, et seq. 4, 30
Commodity Exchange Act, Sept. 21, 1922, c. 369, 42 Stat. 998
7 U. S. C. § 7(a) 7 (Sec. 5a(7)) 4, 19, 48

United States Warehouse Act, Aug. 11, 1916, c. 313, Part C, 39 Stat. 486, 7 U. S. C. § 241, et seq. 4
7 U. S. C. § 242 (Sec. 2) 45
7 U. S. C. § 243 (Sec. 3) 52, 53, 55, 57, 58
7 U. S. C. § 244 (Sec. 4) 46, 58
7 U. S. C. § 245 (Sec. 5) 57, 58
7 U. S. C. § 246 (Sec. 25) 36, 38, 47, 58
7 U. S. C. § 247 (Sec. 6) 18
7 U. S. C. § 254 (Sec. 13) 42, 44, 45, 46
7 U. S. C. § 256 (Sec. 15) 44
7 U. S. C. § 258 (Sec. 16) 44
7 U. S. C. § 260 (Sec. 18(i)) 36, 47
7 U. S. C. § 262 (Sec. 21) 44, 45
7 U. S. C. § 264 (Sec. 23) 36, 52
7 U. S. C. § 265 (Sec. 24) 52
7 U. S. C. § 268 (Sec. 28) 35
7 U. S. C. § 269 (Sec. 29) 16, 17, 20, 38, 59
7 U. S. C. § 270 (Sec. 30) 44

Judicial Code
28 U. S. C. § 41(1) 3, 11
28 U. S. C. § 347 2
28 U. S. C. § 380 12

Regulations—United States Warehouse Act.

7 Code Federal Regulations, § 102, et seq. 4, 35
Reg. 2, Sec. 5 52
Reg. 2, Sec. 6 37
Reg. 2, Sec. 7 ..... 37, 57
Reg. 4, Sec. 1(e) 47
Reg. 5, Sec. 3 ..... 36, 38, 45, 56
Reg. 5, Sec. 8 52
Reg. 5, Sec. 12 45
Reg. 5, Sec. 15 52
Reg. 5, Sec. 16 45
Reg. 5, Sec. 18 45
Reg. 5, Secs. 21-23 52

MISCELLANEOUS.

Agriculture Dept., Organization, Rules and Regulations, 11 Fed. Reg. No. 177, § 2328.21 4

Bikle, The Silence of Congress, 41 Harv. L. Rev. 200, 221 (1927) 56

Corpus Juris, v. 59, pp. 1103-4 43

Federal Trade Commission, 1937 Report, "Agricultural Income Inquiry" 34

H. Rept. 4, 71st Cong. 1st Sess. (1930) 18

H. Rept. 60, 64th Cong. 1st Sess. (1916) 16, 19

Illinois Constitution, Art. XIII 47

Opinions of the Attorney General, Vol. 38, p. 539 43

Senate Document No. 248, 79th Cong. 2d Sess., pp. 223, 229 30

S. Rept. 1775, 71st Cong. 3rd Sess., (1931) 18, 21

Statement, Rep. Lever, Cong. Rec. Vol. 53, Pt. 6, pp. 5924-5925, p. 7085 ..... 15, 25

Uniform Warehouse Receipt Act, Sec. 2 (Ill. Rev. Stat. 1945, Ch. 114, § 234) 50

United States Dept. of Agriculture, Circ. No. 51 (Jan. 1926) 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 470

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioner,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

Opinions Below.

The District Court filed a memorandum opinion which has not been reported (R. 75).* The opinion of the Circuit Court of Appeals (R. 87) is reported in 156 F. 2d 33.

* Record references refer to pages in the Transcript of Record printed on January 6, 1947, pursuant to direction of the Clerk of the Supreme Court.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on June 7, 1946 (R. 107). The Petitions for Writs of Certiorari of Rice Petitioner and the Illinois Commerce Commission were filed on September 6, 1946, and both were granted on October 21, 1946 (R. 111). The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended (28 U. S. C., § 347).

Questions Presented.

The essential question for decision is whether the United States, by the enactment of the United States Warehouse Act, has so occupied and pre-empted the field of regulation of grain warehouses licensed under that Act as to deprive the Illinois Commerce Commission of jurisdiction to regulate such warehouses with respect to the matters complained of by Rice Petitioner.

We are concerned in the instant case with only the regulatory matters as to which it is sought to invoke the powers of the Illinois Commerce Commission, and we therefore submit that the Specification of Errors urged by Rice Petitioner (Brief pp. 6-7) does not accurately indicate the issues before this court. Thus, with reference to Specification 1(d), the Circuit Court of Appeals did not, as there indicated, hold the Illinois constitutional prohibition against a warehouseman storing his own grain *invalid* but merely held that it was *inapplicable* to a warehouseman licensed under the federal act. Likewise, with reference to Specification 3, we believe that a careful consideration of the opinion of the Circuit Court of Appeals discloses that its holding precluding state regulation of federally licensed warehousemen was limited to the matters complained of in the Rice complaint filed before

the Commission (R. 103-4) and was not an absolute holding completely exempting such warehousemen from all state regulation.*

The Illinois Commerce Commission, in its Petition for Certiorari and brief in support thereof,† also raises certain procedural questions and now urges only two of several such objections made by that Petitioner in the Circuit Court of Appeals which present the following questions:

(1) Whether under the Johnson Act of May 4, 1934, amending Section 24(1) of the Judicial Code (28 U. S. C., §41(1)) the District Court had jurisdiction to entertain the Complaint in the instant case;

(2) Whether the District Court erred in exercising equitable jurisdiction and should have required Respondents to further pursue their remedies under state law.

---

* This is apparent from the court's reference (155 F. 2d, p. 38, R. 96) to *Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 253, 255, 59 N. E. 2d 689 (1945) which sustained a local police power measure designed for protection against fires and explosions as applied to federally licensed warehouses in Chicago.

† We understand that this brief is to stand as that Petitioner's brief on the merits.

Statutes Involved.

The principal federal statute concerned in this case is the United States Warehouse Act (7 U. S. C., § 241, *et seq.*). This Act together with the regulations* (7 C. F. R. § 102, *et seq.*) promulgated by the Secretary of Agriculture pursuant to Sec. 28 of the Act are attached to this brief for the court's convenience. Section 5(a) (7) of the Commodity Exchange Act (7 U. S. C. § 7(a) (7)) is also involved and appears in Appendix A, Rice Petitioner's brief, p. 80.

---

* Pursuant to provisions of The Administrative Procedure Act (Public Law 404, 79th Cong., 60 Stat. 237, 5 U. S. C. § 1001, *et seq.*), these regulations are referred to as follows in the publication of the organization, and rules and regulations of the Department of Agriculture in 11 Fed. Register No. 177, Part II, Sec. 2, Sept. 11, 1946:

> "§ 2328.21. *Warehouses.* The [Marketing Facilities] Branch administers the United States Warehouse Act (7 U. S. C. 241-273) and the regulations of the Secretary issued pursuant thereto (7 C. F. R., Parts 101-114 and 151). The procedure for securing licenses under the Warehouse Act and for the suspension or revocation of such licenses is set out in said regulations. The Branch also cooperates with the warehousing trade, and State and Federal agencies in developing and promoting sound and improved warehousing methods and financial structures."

STATEMENT OF THE CASE.

The record consists solely of pleadings and affidavits. Rice Petitioner's Statement of the Case fails, however, to adequately summarize the allegations of the Complaint in the District Court (R. 1) and makes no reference to the affidavits filed in support of Respondents' motion for a preliminary injunction (R. 26). We, therefore, deem it necessary to supplement that Statement with certain facts appearing in the record.

The Complaint.

Jurisdiction of the District Court is invoked on the ground that the controversy arose under the constitution and laws of the United States, and, in particular, the United States Warehouse Act, the Commodity Exchange Act, and the commerce clause of the Constitution (Art. I, Sec. 8, Cl. 3) (R. 2). Each Respondent is engaged in the business of public storage of grain in interstate commerce pursuant to license duly issued by the Secretary of Agriculture under the United States Warehouse Act in accordance with a schedule of rates, charges and practices duly filed with said Secretary as required by law, and each, as the holder of such license, is subject to said Act and regulations thereunder (R. 2-3).

Chicago is the world's largest grain market. For the year ended December 31, 1943, approximately two billion bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trade in grain futures contracts in the United States is transacted on the Chicago Board of Trade, a corporation which has been designated a

contract market by the Secretary under the Commodity Exchange Act. Under that Act futures contracts on the Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the United States Warehouse Act. The warehouse receipts issued to Respondents are issued under, and comply in all respects with that Act, and are in general use upon the said Board of Trade in satisfaction of futures contracts, and as such are instruments of interstate commerce (R. 4).

Respondents, on August 30, 1944, filed with the Illinois Commerce Commission their joint motion to dismiss the Rice complaint invoking before the Commission the regulatory laws of Illinois here in controversy in its entirety or, in the alternative, each of the separate charging paragraphs thereof, upon the ground that the subject matter of the Rice complaint was beyond the jurisdiction of the Commission and was exclusively within the jurisdiction of the United States Government by reason of the commerce clause of the Constitution, the United States Warehouse Act, and the Commodity Exchange Act (R. 5, 22). On October 10, 1944, the Commission entered its order denying the motion in its entirety, and Respondents alleged that the Commission in so doing illegally usurped jurisdiction to regulate their warehouses, which, by the statutes of the United States and the regulations thereunder, were subject to sole control by the Federal Government in the particulars complained of in the Rice complaint (R. 5).

Each Respondent (except Great Lakes Elevator Corporation) is engaged in business as an owner and merchandiser of grain and regularly stores, for interstate

commerce, grain owned by it (as well as that of others) in its warehouse or warehouses; although this right is permitted by the United States Warehouse Act and regulations thereunder, under the Constitution of the State of Illinois as construed by the Illinois Supreme Court, it is illegal for a public warehouseman to store his own grain in a public warehouse operated by him. Respondents issue to themselves negotiable warehouse receipts for grain, in form prescribed by the United States Warehouse Act, representing in the aggregate many millions of dollars annually, and such receipts represent grain belonging to the owners of such warehouses. Such receipts are used by Respondents for the purpose of transferring title to such grain in sales to others and also as collateral for commercial loans obtained from banks. Such receipts are also used by others for a similar purpose. Many of such warehouse receipts are outstanding and have been pledged as collateral for such loans. The Illinois law, if applicable, would make the storing of such grain illegal and would seriously impair the value of such warehouse receipts in commercial transactions (R. 6-7).

A hearing by the Commission on the Rice complaint would have the immediate effect of creating a cloud upon such warehouse receipts outstanding or to be issued and Respondents as well as the public would thereby be subjected to irreparable damages (R. 7). Further allegations of irreparable injury were set forth on the ground that Respondents would be subjected to fine and imprisonment for failure to take out a state license under the Illinois law, and to multiplicity of actions, and that the Commission by its refusal to dismiss the Rice complaint has decided that Respondents were subject to the laws of the State of Illinois and the penalties provided for violations thereof (R. 8-9).

It was further stated that the October 10, 1944 order of

the Commission was invalid and that any proceedings pursuant thereto would be futile and would entail protracted hearings and substantial expenditures for necessary costs, and would thereby result in irreparable damage (R. 10).

Motion for Preliminary Injunction and Affidavits in Support Thereof.

Respondents moved for a preliminary injunction and in support thereof filed affidavits (R. 49-62) showing the magnitude and national scope of their business.

The affidavits recited the issuance by each of them of warehouse receipts on forms furnished by the Department of Agriculture, which state on their face that the grain received by each warehouseman was "for storage in the course of interstate or foreign commerce." The affidavits further disclosed the amount, for stated periods, of grain stored in each warehouse, including several millions of bushels owned by the warehouseman against which receipts were outstanding, and also show that each had filed with the Secretary of Agriculture schedules of rates and charges for the storage and handling of grain and that each was regularly inspected and examined by representatives of the Department of Agriculture.

SUMMARY OF ARGUMENT.

I.

The District Court had jurisdiction to entertain Respondents' Complaint and to grant the injunctive relief sought by Respondents. The Johnson Act restricting jurisdiction of the District Court, is not applicable as the Complaint is based on the theory that federal laws have superseded state laws, and no question of the constitutionality of state laws is involved. In view of the direct allegations showing the inadequacy of legal remedies and irreparable injury, the Complaint presents a clear case for equitable relief in the District Court.

II.

Respondents' warehouses are instrumentalities of interstate commerce. The fact that states may constitutionally regulate public warehouses is not determinative of the issues before the court as to whether Congress by enactment of the United States Warehouse Act, as amended in 1931, precludes the state regulation sought to be invoked.

III.

The 1931 amendments to the United States Warehouse Act clearly indicate that Congress did not intend that federally licensed warehouses be subject to any scheme or system of state regulation. It is immaterial, if such be the case, that applicable federal laws may not have expressly or completely dealt with all the phases of regulation in issue. The cases relied upon by Petitioners involve federal regulation limited in scope and not entailing a wide variety of federal controls as is present in the instant case. The

United States Warehouse Act is much broader in scope than claimed by Petitioners, but even if considered merely as a "Warehouse Receipt" law, state regulation of federally licensed warehouses would defeat its admitted purposes.

IV.

The United States Warehouse Act established a uniform system of warehousing of agricultural products under federal control. To grant the relief sought in the Rice complaint before the Illinois Commerce Commission would prevent the accomplishment of this purpose. The principal charges of the Rice complaint are covered by federal law and regulations which as regards federally licensed warehouses, foreclose license requirements of state laws, and preclude state regulation as to rates and charges, undue discrimination, improper mixture of grain and undue delay in loading, the propriety of warehousemen storing grain in their own warehouses, the safety and adequacy of elevators, the efficient storage and handling of grain, and the abandonment of service. While Congress did not expressly deal with the issuance of securities and other corporate transactions, it is obvious that it would unduly hamper the administration of the Federal Act to subject federally licensed warehouses to state laws in this regard. Even without consideration of the clear provisions of the 1931 amendments compelling federal supersedure of the state regulation in question a comparison of the charges in the Rice complaint with the provisions of the applicable federal laws and regulations, clearly discloses that enforcement of state law in the instant case would involve many points of conflict with federal law and plainly infringe its policy.

ARGUMENT.

I.

THE DISTRICT COURT HAD JURISDICTION TO ENTERTAIN THE COMPLAINT HEREIN.

Rice Petitioner (Case No. 470) has not on this appeal made any objection to the jurisdiction of the District Court. However, the Attorney General of the State of Illinois in the Petition of the Illinois Commerce Commission for Writ of Certiorari (Case No. 472) persists in urging two of the several objections made below with respect to the jurisdiction of the District Court. His principal contention now is that the Johnson Act of May 14, 1934, c. 283, § 1, 48 Stat. 775, 28 U. S. C. § 41 (1) (quoted in full at p. 12 of the Petition of the Illinois Commerce Commission) deprived the District Court of jurisdiction to grant the injunctive relief sought in the instant case. It will be noted by the language of this restrictive statute it is only applicable "where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States * * *". Inasmuch as jurisdiction in the complaint is predicated solely on the theory that the federal laws in question have superseded the Illinois laws sought to be invoked and is not based on diversity of citizenship or grounded upon the repugnance of the order of the Illinois Commerce Commission to the Federal Constitution, this statute is clearly inapplicable. As stated by the Circuit Court of Appeals (156 F. 2d, p. 36, R. 91-92) "if the plaintiffs had succeeded below or if they succeed in this court, it would not mean that any provision of the Illinois

law or Constitution has been invalidated. It would only mean that such law or constitutional provision is inapplicable to a situation such as the instant one."

In *Cloverleaf Butter Co.* v. *Patterson,* 315 U. S. 148, as in the instant case, it was alleged in the complaint that a federal statute had superseded state laws and it was contended that a three judge court should have been convened in accordance with § 266 of the Judicial Code (28 U. S. C. § 380). In rejecting this contention the Circuit Court of Appeals, 116 F. 2d 227, 230, stated with reference to the complaint that "it did not attack the constitutionality of the Alabama statutes, it affirmed their constitutionality". This Court considered the case on the merits without reference to the jurisdictional question. To the same effect, see *Ex Parte Bransford,* 310 U. S. 354, 358; *Ex Parte Buder,* 271 U. S. 461; *Ex Parte Hobbs,* 280 U. S. 168; *Query* v. *U. S.,* 316 U. S. 486, 488, 489; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, 52-54, and *Case* v. *Bowles,* 327 U. S. 92.

The Attorney General of Illinois further, in questioning the exercise of equity jurisdiction by the District Court, now relies on *Natural Gas Pipe Line Co.* v. *Slattery,* 302 U. S. 300 (Illinois Commerce Commission Petition, p. 14). In that case the Illinois Commerce Commission investigating the rates charged by a public utility operating solely in Illinois, entered an order requiring the plaintiff, an affiliated company, to produce certain records. Plaintiff did not ask the Commission to modify or set aside such order and immediately instituted an action to enjoin the Commission from proceeding. Unlike the instant case, the Commission was not given an opportunity to act thereon, and the injunction action was held premature. In the case at bar the Commission was afforded an opportunity to pass upon Respondents' objections to its jurisdiction

when they moved to dismiss the complaint upon the identical grounds asserted by them in the District Court proceeding, namely, lack of power in the Commission.

In view of the direct and specific allegations in the instant case showing the inadequacies of legal remedies and the various forms of irreparable injury to which Respondents would be subjected,* it is clear that the complaint presents a traditional case for equitable relief which this court has approved in analogous situations. See, *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456, sustaining federal equity jurisdiction in a case in which it was claimed that a State Commission was without authority to fix rates of utilities subject to regulation by the Federal Power Commission.

II.

RESPONDENTS' WAREHOUSES ARE INSTRUMENTALITIES OF INTERSTATE COMMERCE.

It is alleged in the Complaint (Para. III, R. 3) that Respondents are engaged "in the business of the public storage of grain for hire for interstate commerce", and detailed affidavits were filed confirming this allegation (R. 49-62). Moreover, if need be, a court could properly

* (1) Threatened loss of the right of Plaintiffs to deal in grain stored in their own warehouses (Complaint, Para. X, R. 6); (2) threatened loss of the right to conduct their business free from interference by the Illinois Commerce Commission (Complaint, Para. X, R. 7); (3) threatened impairment of the validity and negotiability of millions of dollars of warehouse receipts now outstanding and to be issued (Complaint, Para. XI, R. 7); (4) likelihood of substantial penalties for noncompliance with Illinois laws (Complaint, Para. XII, R. 8); (5) likelihood of prosecution and multiplicity of suits (Complaint, Para. XIII, R. 9); and (6) heavy expenditures in connection with protracted and involved hearings before the Illinois Commerce Commission (Complaint, Para. XIV, R. 10).

take judicial notice of the important part that grain elevators situated in Chicago play in the vast interstate and international flow of grain passing through the Chicago market. (Cf. *Girard* v. *Kimbell Milling Co.*, 116 F. 2d 999, 1001 (C. C. A. 5).) Although Petitioners do not expressly raise any question on this score, and concede (Rice Brief, p. 45) that Congress has the power to exempt federal warehouses from all state laws, counsel state that Respondents' warehouses "are * * * matters of local or domestic concern * * *" (Rice Brief, p. 12.) In so arguing they rely on *Munn* v. *Illinois*, 94 U. S. 113, and *Davies Warehouse Company* v. *Bowles*, 321 U. S. 144. We do not question the holding in those cases to the effect that grain warehouses are affected with a public interest and therefore may be subject to state regulation. However, it is inconceivable that counsel would, at this late date, urge that Respondents' federally licensed warehouses are purely matters of local and domestic concern as it is well settled that such warehouses and similar facilities are engaged in interstate commerce. See, *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189 and *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 54 (North Dakota grain elevators); *Stafford* v. *Wallace*, 258 U. S. 495, following *Swift & Co.* v. *U. S.*, 196 U. S. 375 (commissionmen and livestock dealers in the Chicago Stock Yards); *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, sustaining the validity of regulation of the Chicago Board of Trade under the Grain Futures Act); *Wickard* v. *Filburn*, 317 U. S. 111 (producer of wheat); *Currin* v. *Wallace*, 306 U. S. 1 (tobacco auctioneers and warehousemen); *Mulford* v. *Smith*, 307 U. S. 38 (tobacco growers).

Since Respondents are unquestionably engaged in interstate commerce, and their warehouses are instrumentalities of interstate commerce just as railroads and other media of

interstate transportation and communication, the fact that states may have for a long time subjected public warehousemen to local regulation is not determinative of the precise issue in this case as to whether Congress intended after enactment of the United States Warehouse Act, as amended in 1931, to permit dual regulation of federally licensed warehouses.

III.

THE 1931 AMENDMENTS TO THE UNITED STATES WAREHOUSE ACT SHOW CONCLUSIVELY THAT FEDERALLY LICENSED WAREHOUSES WERE NOT TO BE SUBJECT TO ANY SYSTEM OF STATE REGULATION.

The prime purpose and objective of the United States Warehouse Act as originally enacted in 1916 was to establish a uniform system of warehousing under federal control. As stated by Representative Lever, sponsor of the bill (Vol. 53 Cong. Rec., Pt. 6, pp. 5924, *et seq.*, see also p. 7085, Appendix pp. 61, 63-64):

> "A Federal warehouse law insures beyond doubt uniformity in character of warehouses, uniformity in methods of inspection, uniformity in methods of weighing and grading, uniformity in the standard of measurement—grade—and above all, and more important than all, such a system provides for a uniform warehouse receipt, or credit instrument, for the same product in every State in the Union."

See also to the same effect, U. S. Dept. of Agriculture Misc. Circular 51 (Jan. 1926) summarizing the aims and

objectives of the Act as set forth in H. Report 60, 64th Cong. 1st Sess., Jan. 21, 1916.*

After some years of experience under the 1916 Act, it was found that attainment of the objectives of the Act was not possible because of the provisions of Section 29 which subordinated federal regulation to state authority.

Prior to its amendment in 1931, Section 29 of the Act read as follows:

> "Nothing in this chapter shall be construed to conflict or to authorize any conflict with or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the Secetary of Agriculture is authorized to cooperate with such officials as are charged with the

* It was stated at the beginning of this report (Vol. 53, Cong. Rec., Part 7, p. 7062, *et seq.*):

> "This bill provides for the inauguration of a uniform system of warehousing under Federal supervision • • •.
>
> "The outbreak of the European war emphasized the fact that the farm marketing machinery of this country is seriously weak, insufficient, and inadequate • • • a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of proper control and regulation of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems of the country.
>
> "The inauguration under this bill of a permissive system of warehouses licensed and bonded under authority of the Federal Government for the storage of staple and nonperishable agricultural products upon which uniform receipts may be issued, the weight and grades of the products specified therein having been previously determined by licensed weighers and graders in accordance with Government standards, *would go far in the direction of standardizing warehouse construction, storage conditions, insurance, accounting, financing, and the handling and marketing of farm products.*" (Italics ours.)

> enforcement of such state laws in such States and through such cooperation to secure the enforcement of the provisions of this chapter. * * *" (7 U. S. C. § 269)

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 40 F. 2nd 1 (C. C. A. 5, 1930), plaintiff cotton warehousemen licensed under the United States Warehouse Act sought to enjoin the enforcement of an Alabama law providing for licensing and regulating the business in which they were engaged, alleging that enforcement of such provisions would be an unwarranted interference with interstate commerce. The court denied the injunction on the ground that Section 29 of the United States Warehouse Act as then in force did not indicate the intention of Congress to exclude the jurisdiction of the states in regulating agricultural warehouses.

Section 29 was amended in 1931 to read as follows:

> "*In the discretion*[1] of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; *but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect. * * *" (Italics showing amendments ours.)

This amendment* by its very terms clearly manifests the intention of Congress to vest jurisdiction of federally licensed warehouses in the Secretary to the exclusion of the state authorities. Coming as it did after the decision

[1] These three italicized words were added in the 1931 Amendments, again demonstrating the primacy of federal control. Unless federal law and regulations were paramount, it is obvious that there would be no field in which the Secretary could exercise any discretion.

* For instances in which a statute vesting "exclusive" jurisdiction in administrative bodies has been given a literal meaning, see *Myers* v. *Bethlehem Ship Building Corp.*, 303 U. S. 41, *Macauley* v. *Waterman Steamship Corp.*, 327 U. S. 540.

in the *Dunwoody* case, it is clear that Congress intended to avoid a system of dual control with its resulting confusion and inconsistencies. As the Circuit Court of Appeals stated, (R. 97, 156 F. 2d 33, 39), unless this was the intent of Congress "there was no real purpose for the Amendments of 1931."

That the specific purpose of the amendments was to avoid dual regulation is borne out by the reports of the House and Senate Committees on the 1931 amendment, which reports appear on Appendix pp. 60, 64.

In the House Report (H. Rept. 4, 71st Cong. 1st Sess. p. 4) it was stated: "Under Section 29 * * * of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. * * * *To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject.*" (Italics ours.)

In the Senate Report (S. Rept. 1775, 71st Cong., 3rd Sess., p. 2) it was stated in referring to Sec. 29 of the Act as originally enacted: "The effect of this wording is to make the Federal act subservient to the State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. *The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom.*" (Italics ours.)

This intention of Congress is also shown in the amendment to Section 6 of the United States Warehouse Act (7 U. S. C. § 247), which accompanied the amendment of Section 29. Prior to its amendment, Section 6 required, as a condition to securing a federal license, that each

licensee give a bond "to secure the faithful performance of his obligations as a warehouseman *under the laws of the State, district or territory* in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder * * *." The amendment, however, eliminated the requirement that the bond be conditioned upon *compliance with the laws of the State, district or territory in which the warehouse was conducting business*, and provided merely that the requirement that the bond be conditioned upon compliance with the Federal Act and regulations thereunder. That this change in Section 6 was also in furtherance of the new concept of Section 29 is borne out by the statement in the Senate Committee Report (S. Rept. 1775, 71st Cong., 3rd Sess., Appendix at p. 66) "Again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

Pursuing this clear-cut policy of divesting state authorities of control, Congress in 1936 provided in Section 5a of the Commodity Exchange Act that contract markets, such as the Chicago Board of Trade, shall require that receipts issued under the United States Warehouse Act

> "* * * be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and *notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges* than under State law." (Italics ours.) 7 U. S. C. § 7a(7).

That the 1931 amendments had the effect of foreclosing state action in the instant case was definitely recognized in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 *infra*, p. 32). The court in footnote 5 (p. 155) cited *Merchants Exchange* v. *Missouri*, 248 U. S. 365, as an example

of an instance where the state was free to legislate upon matters not preempted by the federal government. This case dealt with Section 29 of the United States Warehouse Act as it read prior to the 1931 amendment. The court then, in footnote 6 (p. 156) cited Section 29 as amended in 1931 as an illustration of the exercise by Congress of its power so as to supersede state regulation, and make federal regulation exclusive. As stated by the Circuit Court of Appeals (156 F. 2d p. 39, R. 97):

> "Thus we have the court in the same opinion [the *Cloverleaf* case] treating Section 29 before it was amended as an illustration of dual authority, and Section 29 after it was amended as providing for sole authority of the federal government."

In their endeavor to avoid the plain effect and meaning of Section 29, as amended, counsel cite (Rice Brief, p. 43) *U. S.* v. *Hastings*, 296 U. S. 188. In that case the court sustained a demurrer to an indictment for stealing products from a federally licensed warehouse because it was not alleged that the goods were stored for interstate or foreign commerce. Whether or not the Secretary of Agriculture had exclusive jurisdiction over federally licensed warehouses was not passed upon by the court. We submit that this case in no way justifies the narrow construction which counsel would seek to give the broad terms of the 1931 amendments.

The voluntary or permissive aspect of the licensing of federal warehouses which is emphasized by counsel (Rice Brief, p. 30) is of little import. By way of comparison, national bank charters are also permissive and voluntary but once having been organized as a national bank, immunity from state systems of regulation follows. The mere possibility that a national bank may be converted into a state bank does not in any manner detract from

the paramount authority of the federal government over the bank while enjoying federal status. This analogy to the National Banking Act was referred to in the Senate Report (S. Rept. 1775, 71st Cong. 3rd Sess., p. 2, Appendix, p. 67). So here, as long as the warehouseman holds a federal license, all inconsistent state regulation is precluded. No freedom from control is thereby created, as counsel insist (Rice Brief, p. 24). After the federal license is issued the warehouseman is under the jurisdiction of the Secretary of Agriculture, and regulation by a single authority follows in accordance with the clear intent of Congress. In considering this, the Circuit Court of Appeals said with reference to a federal licensee (p. 40, R. 98, 156 F. 2d):

> "• • • he is under the Act as definitely and certainly as though it was a mandatory requirement on his part. No vacuum is created, as defendants argue. Before he is issued a federal license he is under the control of the state, but after the federal license has been issued he is under the jurisdiction of the Secretary."*

In Re Farmers Cooperative Association, 8 N. W. 2d 557 (S. D. 1943), involves the exact question before this Court. Prior to 1935 the Association was licensed to operate a public warehouse by the Public Utilities Commission of South Dakota under state warehouse laws, similar to the Illinois statutes regulating warehouses. In 1935 the Association applied for and obtained a license under the United States Warehouse Act and did not comply with the state law. The Commission after a hearing found that the Association was operating in violation of state law, and entered an order requiring it to cease and desist from further operations as grain warehouseman.

* See, to the same effect, excerpt from Senate Report as to 1931 Amendments, (Appendix, pp. 66, 67) appearing in footnote to opinion below (156 F. 2d, p. 38, R. 95).

In holding this order improper, the Court stated the issues as follows (p. 559):

> "The central issue is two-fold. Does warehousing as conducted by the Cooperative fall within the reach of the power granted to Congress by the commerce clause of the Constitution? Article 1, § 8, clause 3. If so, did Congress intend to exert that power when it enacted the United States Warehouse Act?"

On the first issue, the Court finding that the business of the warehouse involved was local in character, and not a part of interstate commerce, nevertheless held that the business of such warehouse so affected interstate commerce that it fell within the reach of federal power.

In disposing of the contention that the State law could be enforced despite the enactment of the United States Warehouse Act, the Court stated (p. 562):

> "It is suggested that 'The principle is thoroughly established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together"' (See *Kelly* v. *Washington* and cases cited, 302 U. S. 1, 58 S. Ct. 87, 92, 82 L. Ed. 3) is applicable here. We think not. *The collision between these acts is head on. It is but a question of which master the Cooperative must serve.* * * * We interpret this [the 1931 Amendment to Sec. 29] as a clear grant of discretionary power to the Secretary of Agriculture, to achieve the congressional aim either through cooperation with state officials in promoting state regulation, or by direct federal control. *When the latter course is followed both by reason of the terms of the act, and the paramount nature of federal power, the federal control displaces state control.*" (Italics ours.)

In view of the clear expression by Congress in the 1931 amendments referred to above it is immaterial, if such be

the case, that the federal laws may not have expressly or completely dealt with all phases of regulation now in issue. Since Congress has by the express language of the 1931 amendments preempted and occupied the field of the regulation of federal warehouses, state laws—whether co-extensive with, supplemental to, in aid of, or different from the federal act—are superseded and rendered inoperative. This principle has been enunciated by this Court in many cases. Thus, in *Prigg* v. *Commonwealth of Pennsylvania*, 41 U. S. (16 Pet.) 539, the Court stated (pp. 617-8):

> "For, if Congress have a constitutional power to regulate a particular subject and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. *In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject-matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it* • • • *the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed.*" (Italics ours)

The *Prigg* case was followed in *Southern Ry. Co.* v. *R. R. Commission of Indiana*, 236 U. S. 439, where it was said, in invalidating an Indiana statute regulating railroad car equipment (p. 448):

> "The test, however, is not whether the state legislation is in conflict with the details of the Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control."

In *Charleston and Western Carolina Railway Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, the Court stated:

> "(p. 604.) It is suggested that the Act is in aid of interstate commerce. The state law was not contrived in aid of the policy of Congress, but to enforce a state policy differently conceived; and the fine of $50.00 is enough to constitute a burden * * * but that is immaterial. *When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.*" (Italics ours.)

In *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605, the Boiler Inspection Act regulating locomotive equipment was held to preclude State legislation requiring further and additional equipment. In so holding, the Court stated (pp. 612-3):

> "* * * The fact that the Commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the Act delegating the power. We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or however different their purpose."

To the same effect, see *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147, 153-4, involving the Federal Employers Liability Act.

Applying the principle of the foregoing authorities to the instant case it will be seen that differences in the philosophy, technique, method of treatment or general scope of the state law will not save it from being superseded by the federal enactment in this case. Had Congress

desired to avoid supersedure inherent in the 1931 amendments, it would have done so in unmistakable terms.*

Counsel (Rice Brief, p. 27, *et seq.*), stress the point that the United States Warehouse Act "in nature, form and intent is essentially a Warehouse Receipt Act". In support of their contention that the Act is of limited scope, counsel refer to the Statement of Representative Lever, Sponsor of the 1916 Act, but in so doing have omitted significant portions of such statement. (See excerpts therefrom (53 Cong. Rec. Pt. 6, pp. 5924-5, also p. 7085, Appendix p. 61, *et seq.*) These together with the House Report (p. 16, *supra*) clearly disclose that the purposes and objectives of the Act were much broader than indicated by counsel and covered all phases of warehouse regulation and operation.

* Cf. *First Iowa Hydro-Elec. Coop.* v. *Federal Power Commission*, ... U. S. ..., 66 S. Ct. 906, 917, where in holding that it was not necessary to obtain a permit under state law for a project under the Federal Power Act, the Court considered Sec. 27 of that Act protecting state laws from supersedure as having reference only to proprietary interests in water rights, and stated:

> "This section therefore is thoroughly consistent with the integration rather than the duplication of federal and state jurisdictions under the Federal Power Act. It strengthens the argument that, in those fields where rights are not thus 'saved' to the states, Congress is willing to let the supersedure of the state laws by federal legislation take its natural course."

Cases Cited by Petitioners.

The decisions cited by counsel (Rice Brief, pp. 16-26) holding that state laws had not been superseded are readily distinguishable. These cases involve federal regulation limited in scope and not entailing a wide variety of controls found in a broad federal regulatory scheme such as is embodied in the United States Warehouse Act.

In *Townsend* v. *Yeomans*, 301 U. S. 441 (Rice Brief, p. 18), the question in issue was whether a Georgia statute fixing maximum fees for handling and selling tobacco conflicted with the Tobacco Inspection Act. The Court found no conflict because that Act was limited solely to inspection and grading of tobacco* and was not concerned with and did not touch upon the question of charges by the handlers of tobacco. The Court said (pp. 452-3):

> "* * * It (the Tobacco Inspection Act) did not undertake to regulate the charges of warehousemen or in any way to derogate from the existing state legislation upon that subject. It sought to aid tobacco growers by establishing and promoting the use of standards of classification and maintaining an official inspection service * * *."

Absent entirely in the federal statute involved in the *Townsend* case was the broad general regulatory system provided by the United States Warehouse Act and the regulations thereunder. Moreover, the warehousemen involved in that case did not hold a federal license. In emphasizing that the Tobacco Inspection Act was not intended to conflict with the state regulation there in question the Court pointed (page 454) to the provision of the Federal

* In *Currin* v. *Wallace*, 306 U. S. 1, 13, in referring to the *Townsend* case this court said: "But we found nothing in the federal act which undertook to regulate the charges of warehousemen and hence we concluded that Congress had restricted its requirements and left the States free to deal with the matters not covered by federal legislation and not inconsistent therewith."

Act authorizing the Secretary of Agriculture to co-operate with the states. That provision referred to was similar to Section 29 of the United States Warehouse Act *prior to its amendment in 1931.*

In *Kelly* v. *Washington*, 302 U. S. 1, 13-4 (Rice Brief, p. 16), the Federal Act did not cover the subject of inspection of hulls and machinery of vessels of the type involved —the inspection of which was provided for by state statute. The only question was whether Congress had occupied the field of inspection of vessels of the type involved by reason of legislation providing for such inspection as applied to *other* vessels. In contrast with the statutes involved in the *Kelly* case, the United States Warehouse Act and regulations thereunder deal specifically with the regulation of the same subject matter as do the state laws involved herein.

Petitioner also cites (Rice Brief, pp. 35, 37) *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202. The Court held that the limited regulation by the Federal Act of the business of a customhouse broker did not deprive the state of the right to require a corporation engaged in that business to take out a license under the Foreign Corporation Act of that state. The Court said (p. 207):

> "* * * But the limited and defined control which federal authority has thus far seen fit to assert over customhouse brokers does not deny to Minnesota the power to subject Union to the same demand which it makes of all other foreign corporations seeking the facilities of Minnesota's courts. The federal requirements and this state requirement can move freely within the orbits of their respective purposes without impinging upon one another. The federal regulations are concerned solely with the relations of the customhouse broker to the United States and to the importer and exporter."

Again there is entirely absent from the statute in the *Jensen* case, as indicated by the above quotation, any broad general scheme of regulation of the business of customhouse brokers similar to that found in the United States Warehouse Act applied to warehousemen. It will also be noted that unlike the case at bar, the regulations of the agency administering the federal law had specifically provided for and recognized state requirements relative to doing business in such states.

Likewise, in the remaining cases relied upon by counsel, there was no conflict or inconsistency between the state statute and a comparable federal act. In *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 (Rice Brief, p. 20), none of the federal laws relied upon by the employer to invalidate an order of the Illinois Commerce Commission requiring it to provide cabooses for its employees dealt in any way with, and the Interstate Commerce Commission had not adopted any regulation as to, the use of the caboose cars on interstate trains in terminal areas. In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740 (Rice Brief, p. 26), the Court specifically pointed out in sustaining the Wisconsin Employment Peace Act declaring certain conduct of employees an unfair labor practice (page 749), "Congress has not made such employe and union conduct as is involved in this case subject to regulation by the Federal Board." In *Savage* v. *Jones*, 225 U. S. 501 (Rice Brief, p. 17), the Court pointed out in sustaining a statute requiring complete disclosure of contents of food products in the face of a federal statute merely prohibiting misbranding did not in any way involve a conflict with the latter Act and could be upheld (p. 539) "without impairing in the slightest degree its operation and effect."

Petitioners (Rice Brief, p. 22) insist that the decision of the Circuit Court of Appeals will render ineffective

state regulation of warehouses under the state laws. However, as was clearly pointed out in the opinion below (156 F. 2d at p. 40, R. 98), state regulation is left unimpaired as to warehouses not licensed under federal law, and "no vacuum is created." Many warehousemen are not engaged in interstate commerce, and others, although eligible, have not elected to obtain a federal license. Such warehousemen are, of course, subject to state law. (See, R. 15 where it appears that two of the warehouses named in the Rice complaint did not hold federal licenses.)

Counsel further state (Rice Brief, p. 21):

> "The Circuit Court of Appeals in this case has erroneously assumed that a mere possibility of future conflict, even though none presently exists, warrants the invalidation of the state regulatory system. The respondents have not disclosed a single instance where the Secretary of Agriculture, who administers the federal acts here involved, has performed any of the regulatory functions at issue. Indeed, federal statutes do not empower him to perform such functions."

This statement is without basis, and is contrary to the record (R. 51, 53, 59, 62). As stated in the opinion below (156 F. 2d, p. 36, R. 91):

> "* * * each of the plaintiffs has filed with the secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture."

Such statement also overlooks the fact that the Secretary of Agriculture pursuant to Sec. 28 of the Act has adopted comprehensive regulations governing the operation of federally licensed warehouses which were in force at all times here in question. (7 C. F. R. § 102, *et seq.*) Counsel's citation (Rice Brief, p. 20) of *Welch Co.* v. *New Hampshire*, 306 U. S. 79, to the effect that supersedure of state law pursuant to federal enactment does not take place until the

agency charged with its enforcement acts is therefore clearly inapplicable. In that case, the regulations of the Interstate Commerce Commission under the Motor Carrier Act were not to become effective until more than a year after the violation of state law occurred.

Counsel (Rice Brief, pp. 33-34) emphasize the fact that the United States Warehouse Act lacks the usual provisions found in statutes regulating utilities, particularly with respect to hearings, findings and judicial review. This argument overlooks entirely the provisions of The Administrative Procedure Act* approved June 11, 1946 (Public Law 404, 79th Cong., 60 Stat. 237, 5 U. S. C. § 1001, *et seq.*), which fully covers all these matters: Sec. 7 (hearings), Sec. 8 (decisions), Sec. 9 (imposing requirement for hearings and decisions as provided in Sections 7 and 8 in case of application, revocation and expiration of licenses issued by Federal Agencies), and Section 10 (judicial review).

The decision of the Circuit Court of Appeals in this case will not have the dire consequences conjured by petitioners. On the contrary any other conclusion would result in numerous conflicts, between federal and state authority, confusion and embarrassment inherent in dual regulation, and thereby defeat the clearly expressed intention of Congress that only one authority should control and regulate federally licensed warehouses.†

---

* See, Letter of Attorney General of the United States dated October 19, 1945, to Chairman of the Senate Judiciary Committee (Senate Document No. 248, 79th Cong., 2nd Sess. pp. 223, 229) stating that Sections 9 and 10 were generally declaratory of existing law.

† See, *First Iowa-Hydro Electric Coop.* v. *Federal Power Commission*, ... U. S. ....., 66 S. Ct. 906, 912, *supra*, where, in holding that an applicant need not first obtain a permit under state law as a condition precedent to the issuance of a federal license for the same project under the Federal Power Act, this

IV.

TO GRANT THE RELIEF SOUGHT BEFORE THE ILLINOIS COMMERCE COMMISSION WOULD PREVENT THE ATTAINMENT OF THE PURPOSES AND OBJECTIVES OF THE UNITED STATES WAREHOUSE ACT.

The function of this court in determining whether acts of Congress supersede state law is described as follows in *Hines* v. *Davidowitz*, 312 U. S. 52, which held that the Federal Alien Registration Act of 1940 precluded the enforcement of the Pennsylvania Alien Registration Act of 1939 (p. 67):

> "There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

---

court stated that to impose such requirement would vest in state authorities "a veto power over the federal project", and that:

> "Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the State the comprehensive' planning which the Act provides shall depend upon the judgment of the Federal Power Commission or other representatives of the Federal Government."

In the light of this statement, the first inquiry is: What were the purposes and objectives of Congress in the enactment of the United States Warehouse Act? It is obvious as heretofore shown from an examination of the Act and amendments thereto, the reports in the House and Senate and the congressional debates (pp. 15, 16, 25, *supra*), that Congress intended to establish a nationwide uniform system of warehousing in order to foster trade and commerce in agricultural products, and to facilitate the marketing and financing thereof through the use of warehouse receipts. The laws of the several states on the subject of warehousing thereof, are not uniform. Many of such state laws, as will be shown particularly in considering the laws of Illinois, are in conflict with the United States Warehouse Act and accordingly are "an obstacle to the accomplishment of the full purposes and objectives of Congress".

Federal supremacy over state regulation does not always depend on the express language of the applicable act. A recent application of the rule that state regulation may be precluded by clear implication or inconsistency appears in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, where a state law was held to be superseded although not expressly in conflict with the federal act. In that case, the Court stated the question to be (pp. 165-6):

> "The controversy comes to this. The federal law requires, § 2325, note 10, *supra*, 'a rigid sanitary inspection • • • of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same,' *i. e.*, packing stock butter.
>
> "But as we have seen, the Secretary of Agriculture of the United States cannot condemn the packing stock butter. The commissioner of agriculture and industries of Alabama claims authority under the state statute to condemn packing stock butter held for renovation. Does the state's claim interfere or conflict with the federal power?" • • •

Continuing, the Court concluded (pp. 167-9):

"Coming finally to the query whether the state's claim interferes or conflicts with the purpose or provisions of the federal legislation, we determine that it does. • • •

"Inspection of the factory and of the material was provided for explicitly. Confiscation of the finished product was authorized upon a finding of its unsuitability for food through the use of unhealthful or unwholesome materials, a finding that might be based upon visual or delicate laboratory tests, or upon observation of the use of such materials in the process of manufacture. I. R. C. § 2325; 9 C. F. R. §§ 301.41-43. By the statutes and regulations, the Department of Agriculture has authority to watch the consumer's interest throughout the process of manufacture and distribution. It sees to the sanitation of the factories in such *minutiae* as the clean hands of the employees and the elimination of objectionable odors, inspects the materials used, including air for aerating the oils and confiscates the finished product when materials which would be unwholesome if utilized are present after manufacture. Confiscation by the state of material in production nullifies federal discretion over ingredients. • • •

"• • • To uphold the power of the State of Alabama to condemn the material in the factory, while it was under federal observation and while federal enforcement deemed it wholesome, would not only hamper the administration of the Federal act but would be inconsistent with its requirements." • • • •

The *Cloverleaf* case was followed in *Hill* v. *Florida*, 325 U. S. 538. Section 4 of the Florida statute providing for licensing of "business agents" and Section 6 requiring the filing of annual reports by labor unions and the payment of an annual fee were held invalid in view of the collective bargaining provisions of the National Labor Relations Act.

Counsel (Rice brief, pp. 25-6) infer that the *Cloverleaf* case may have been overruled by the *Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261, since Mr. Chief Justice Stone wrote the majority opinion in the latter case and dissented in the former. The *Penn* case held that sales of milk made in Pennsylvania to the government for the army were subject to the minimum prices fixed by the state price control law. The court considered the applicable federal statutes and found no intention on the part of Congress to give government contractors any immunity. The *Cloverleaf* case was not mentioned in the majority and concurring opinions and was only cited on a collateral point in the dissenting opinion (p. 283).

Rice petitioner (Brief, pp. 38-39) admits that Congress in 1931 "amended Section 29 to establish the federal act as supreme, but only with respect to those specific phases of control delegated to the Secretary,"* and adds "The sole purpose of the amendment was to strengthen the value of warehouse receipts by eliminating conflicting state provisions." Notwithstanding this admission, counsel, relying on the numerous provisions of the state law sought to be invoked in regulating almost every phase of grain warehouse operations fails to recognize or concede any conflict in the many points of impact with the federal law. It would seem to follow under this view that the Act, as

* Counsel at the same time have no difficulty in citing (Rice Brief, p. 48) the 1937 Report of the Federal Trade Commission entitled "Agricultural Income Inquiry" as a considered opinion by that agency that there is no federal regulation of grain warehouses. We submit that this interpretation is unwarranted and that such report merely recommends that the federal government go further and adopt a mandatory system requiring all grain warehouses engaged in interstate commerce to comply with federal laws. It is elementary that the fact that Congress has not fully exercised all its power in a given field does not detract from or vitiate the paramount authority already exercised by the federal government. (See *Currin* v. *Wallace*, 306 U. S. 1, 14.)

amended, was an empty gesture and no control or authority was given the Secretary. We submit that such a construction defeats the clear intent of Congress, impedes the accomplishment of the purposes and objectives of the United States Warehouse Act and ignores the rule that state regulation may be precluded by clear implication or inconsistency.*

The comparison we shall now make of the charges in the Rice complaint with the provisions of United States Warehouse Act and the regulations thereunder clearly demonstrates that the purposes of the Act would be thwarted and that only confusion would result from the "dual system of futile duplication of two authorities over the same subject matter" urged by Petitioners (cf. *First Iowa-Hydro Electric Coop.* v. *Federal Power Commission*, ... U. S. ....., 66 S. Ct. 906, 915).

In addition to the many specific provisions of the Act, we shall also consider in detail the numerous regulations (7 C. F. R., § 102, *et seq.*) promulgated by the Secretary, in accordance with Section 28 (7 U. S. C. § 268) authorizing him to "make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act." As noted by the Circuit Court of Appeals, (156 F. 2d, p. 40, R. 100) no point is made that the regulations are not within the scope of authority conferred upon the Secretary.

---

* Mr. Chief Justice Stone, in his dissent in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 170, recognized this rule when he stated that a state act may be superseded by federal law where "• • •, in terms or in its practical administration, [it] conflicts with the act of Congress or plainly and palpably infringes its policy • • •."

A.

The Rates and Charges of a Federally Licensed Warehouseman Are Subject to the Exclusive Jurisdiction of the Secretary of Agriculture.

Paragraph 7 of the Rice complaint (R. 16) alleges that the warehousemen maintain unreasonable and excessive rates and charges. Similar charges appear in paragraphs 13 (g) and 14 (R. 19-20). Paragraph 16 (R. 20-21), the prayer of that complaint, requests that the Commission, "after hearings, fix just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain."

Section 25 of the United States Warehouse Act provides that after a hearing, the Secretary of Agriculture may revoke a warehouseman's license "upon the ground that *unreasonable or exorbitant* charges have been made for services rendered." (Italics ours) (7 U. S. C. § 246) Section 18 of the Act provides: "That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms * * * (e) the rate of storage charges." (7 U. S. C. § 260). Section 23 requires every warehouseman to make reports to the Secretary of Agriculture concerning the "condition, contents, operation, and business" of the warehouse in such form and at such times as the Secretary may require. (7 U. S. C., § 264)

The regulations state (Reg. 5, Sec. 3): "A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the department a copy of his rules and a schedule of charges to be made by him if licensed." Before making a change in rules or charges, a warehouseman must file a

statement with the Department of Agriculture showing the proposed change and reasons therefor. It is also provided that current rules and charges must be conspicuously posted in the principal office where receipts issued by the warehouseman are delivered to depositors (Reg. 2 Sec. 6). Reg. 2, Sec. 7 provides that before revoking a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4."

It matters not that the Secretary of Agriculture may not have been granted all the usual powers given public utility regulatory bodies with respect to rate making. The true issue before the court is: whether the power and control given the Secretary under the United States Warehouse Act indicate an intention on the part of Congress to make the Secretary's powers over a federal licensee's rates and charges exclusive and thereby preclude the Commission from fixing, establishing and determining the rates and charges of such warehousemen?

Respondents filed a schedule of rates and charges with the Secretary in order to secure their federal licenses. These rates are posted in each of Respondents' offices and are observed by them. Let us suppose that the Commission, pursuant to the complaint, conducted a rate hearing and ordered certain rates raised and others lowered, and ordered respondents to cease and desist from charging those rates filed with the Secretary. If the warehousemen continued to charge such rates they would face the penalties of the state law. If they charged rates different from those

on file with the Secretary they would risk revocation of their federal licenses.

Which rates govern in this head-on clash between the state and federal rates?

Petitioners assume (Rice brief, p. 59) that Respondents would simply file the rates approved by the state agency with the Secretary, and there would be no conflict between the Illinois statutes and the United States Warehouse Act. But this assumption is incorrect. Under Sections 25 and 29 of the Act, the Secretary has the exclusive power after a hearing to determine whether a federal licensee's rates are unreasonable or exorbitant (7 U. S. C. §§ 246, 269). A warehouseman must not make any unreasonable or exorbitant charge for services. Before making any change in charges he must file a statement with the Department of Agriculture showing the proposed change and reasons therefor (Reg. 5, Sec. 3).

How, then, can the Commission fix, establish and determine a federal licensee's rates when such rates may be found by the Secretary to be unreasonable and exorbitant? Is the Commission to review and pass judgment upon the rates filed with the Secretary by a federally licensed warehouseman? How can a federal warehouseman avoid the dilemma of being required to charge a rate specified by state law and losing his federal license if he charges that rate? The inescapable answer is that the rates of federally licensed warehousemen are subject to one authority—the Secretary of Agriculture—and not to the vagaries of the utility commissions of the various states.

The Rice complaint before the Commission clearly demonstrates one aspect of the conflict on this issue. Respondents have filed schedules of rates with the Secre-

tary clearly disclosing preferential rates to government agencies (R. 49-62). The Secretary has interposed no objection to these rates. The Rice complaint charges this to be discriminatory and requests the Commission to take action. We submit that the Secretary is the proper forum to determine any such question.

The Secretary's power to revoke a federal warehouseman's license for unreasonable or exorbitant rates provides an adequate authority to protect the public interest. This sanction, in effect confers upon him the power to control rates in the public interest. If the licensee fails to conform to the rate determined by the Secretary to be reasonable, his valuable federal license is revoked and he will immediately be subjected to state regulation. Thus the Circuit Court of Appeals stated (156 F. 2d, p. 41, R. 101): "We suppose that the essential function of a rate-making body is to determine rates which will be fair both to the utility and to the public, and it appears plain that the Secretary is vested with the authority to accomplish such purpose."

The conflict between the federal and state regulation of rates necessarily involved in the present case is comparable to a similar problem which arose when the Interstate Commerce Act was first adopted. That Act prohibited unjust and unreasonable charges, and required the carrier to establish and file with the Interstate Commerce Commission, and to publish, all schedules of rates. When a carrier filed its rates, fares and charges with the Interstate Commerce Commission and published them it was unlawful to collect a greater or lesser sum for transportation of passengers or property.

Interstate Commerce Commission v. *Cincinnati, etc. Railway Co.*, 167 U. S. 479, held that the Commission under this statute did not have power to fix, establish and deter-

mine rates and charges. The Court, however, held that the rates and charges filed with the Interstate Commerce Commission and published, took precedence over any rate provided by state statute, private contract or common law.

In *Gulf, Colorado and Santa Fe Railway Company* v. *Hefley*, 158 U. S. 98, a Texas law enacted in 1882 provided that charges stated in a bill of lading were binding on the carrier and also adopted penalties for its violation. The Interstate Commerce Act of 1887 gave precedence to the rate filed with the Interstate Commerce Commission and publicly posted, and made that rate controlling. The carrier issued a bill of lading at the new rate of 69¢ per 100 lbs. This rate was filed with the Commission by the carrier, but notice thereof had not been given to the local agent who refused to deliver the goods except at the old rate of 84¢ per 100 lbs. Suit was started and recovery was had against the carrier for all the freight charges by virtue of the state statute. In reversing, it was held that the state statute fixing the penalty in question was not applicable and that the rate filed with the Commission superseded any state statute fixing a different rate. The Court stated (pp. 102-3):

> *"Clearly the state and the national acts relate to the same subject matter and prescribe different rules. By the state act the bill of lading is made controlling as to the rate collectible, and a failure to comply with that requirement exposes the delinquent carrier to its penalties, while the national statute ignores the bill of lading and makes the published tariff rate binding, and subjects the offender, both carrier and agent, to severe penalties. The carrier cannot obey one statute without sometimes exposing itself to the penalties prescribed by the other.* Take the case before us: If, in disregard of the joint tariff established by the defendant and the St. Louis and San Francisco

Railway Company and filed with the Interstate Commerce Commission, the latter company, as a matter of favoritism, had issued this bill of lading at a rate less than the tariff rate, both the defendant company and its agent would, by delivering the goods upon the receipt of only such reduced rate, subject themselves to the penalties of the national law, while, on the other hand, if the tariff rate was insisted upon, then the corporation would become liable for the damages named in the state act * * * *The question is not whether, in any particular case, operation may be given to both statutes, but whether their enforcement may expose a party to a conflict of duties. It is enough that the two statutes operating upon the same subject matter prescribed different rules. In such case one must yield, and that one is the state law.''* (Italics ours.)

The logic of this case, as applied to the case at bar, is inescapable. To the same effect see *Texas and Pacific Railway Company* v. *Mugg*, 202 U. S. 242, holding invalid a contract between carrier and shipper for less than the rates listed in schedules filed with the Interstate Commerce Commission and posted in the stations of the railroad company; and also *Texas and Pacific Railway Company* v. *Abilene Cotton Oil Company*, 204 U. S. 426, holding that a common law action by a shipper to recover excessive charges would not lie where the carrier charged rates filed and published as required by the Interstate Commerce Act.

The provisions of the United States Warehouse Act and regulations thereunder, dealing with rates and charges, in substance, require: (1) the filing of a schedule of charges with the Secretary prior to securing a license, (2) the filing with the Secretary of any change in charges, (3) revocation of a federal license, for unreasonable or exorbitant charges, after a hearing by the Secretary, and (4) the posting of a schedule of charges in a conspicuous place where receipts are issued to depositors. In addition the Secretary is given

comprehensive power to compel warehousemen to make reports and comprehensive power over books and records to aid him in his control of rates and charges.

It is, therefore, submitted that just as was held under the original Interstate Commerce Act (before the Commission was specifically granted rate making powers by the Hepburn Act), the power given the Secretary of Agriculture under the United States Warehouse Act and regulations to pass upon what constitutes "unreasonable or exorbitant" charges precludes a state from establishing and determining the rates and charges of federally licensed warehousemen.

Recognition of any authority in a state agency to fix, establish and determine rates is inconsistent with the broad administrative powers conferred on the Secretary. If such a power were conceded, a rate filed and found reasonable and just by the Secretary could be held unreasonable and unjust and changed by the state despite the fact that the power, jurisdiction and authority conferred on the Secretary, under the United States Warehouse Act, as amended, is "exclusive".

It is therefore submitted that Congress did not intend that the states shall have any power to regulate the rates and charges of warehousemen licensed under the United States Warehouse Act.

B.

The Secretary Has Exclusive Jurisdiction Over Storage Rates on Grain Stored for the Federal Government.

Paragraph 8 (R. 17) of the Rice complaint alleges that the warehousemen discriminate because the federal government and agencies receive preferential rates.

Section 13 of the United States Warehouse Act provides that a federally licensed warehouseman is required to re-

ceive grain for storage in the usual course of business *"without making any discrimination between persons desiring to avail themselves of warehouse facilities"*. (7 U. S. C. § 254) (Italics ours)

Reference is also made to the statutory provisions and regulations set forth in the discussion of the paragraphs of the Rice complaint dealing with rates at pp. 36, 37, *supra*.

As noted from the affidavits filed in support of Respondents' motion for a preliminary injunction (R. 49-62) the warehousemen have stored considerable quantities of grain for the United States Government. The preferential rates for the government and its agencies have been disclosed to the Secretary of Agriculture and have thus been recognized and approved.

If this practice should be considered to constitute discrimination by the state, the federal and state acts undoubtedly conflict, and the state law must yield. This Court has indicated that it is not an improper discrimination to give the United States Government preferential rates. Thus, in *Emergency Fleet Corporation* v. *Western Union*, 275 U. S. 415, 425, this Court stated: "It may be doubted whether the prescribed rule requiring equality of treatment would ever be violated by giving to the government preferential rates." In an opinion* to the Secretary of War the Attorney General has stated that statutes preventing discrimination, such as the Robinson-Patman Act did not apply to the government (38 Opinions Attorney General 539). This, of course, is in accordance with the general rule of statutory construction that the government and its agencies are not to be considered within the purview of a statute unless the intention to include them is clearly manifest (59 C. J. 1103-4).

* Cited with approval in *General Shale Products Corp.* v. *Struck Construction Company*, 37 F. Supp. 598, (D. C. W. D. Ky.).

Regardless of the merits of this controversy, it presents a source of conflict which must be determined by federal authority.

C.

The Secretary Has Exclusive Jurisdiction Over the Discriminatory Charges and Practices Set Forth in the Rice Complaint.

Paragraph 9 of the Rice complaint (R. 17-18) alleges that warehousemen storing and dealing in grain receive undue preference and discriminate by (a) mixing high quality grain with their own inferior grain to reduce delivered grain to minimum quality; (b) sacrificing part of storage charges to effect purchases and sales of grain and rebating storage charges; (c) retaining desirable transit tonnage for their own use; (d) storing their own grain in warehouses with more reasonable insurance rates; and (e) unduly delaying loading of grain.

Mixing and delay in loading grain complained of in paragraphs 9(a) and 9(e) of the Rice complaint are covered by various sections of the United States Warehouse Act. Section 13 provides that the warehouseman shall receive grain for storage without making any discrimination (7 U. S. C. § 254). Section 15 states that fungible agricultural products in a federally licensed warehouse shall be inspected and graded by an inspector licensed to grade under the Federal Act (7 U. S. C. § 256). Section 16 states that warehouseman may mingle fungible agricultural products with other products of the same kind and grade but warehouseman shall not mix fungible agricultural products of different grades (7 U. S. C. § 258). Section 30 provides for fine and imprisonment for any person who fraudulently grades any agricultural products stored under the provisions of the Act (7 U. S. C. § 270). Section 21 provides

that the warehouseman shall "without unnecessary delay" deliver stored products upon proper demand (7 U. S. C. § 262).

The regulations further provide that (Reg. 5, Sec. 18) the warehouseman may not mix lots of different grades of grain except when identity of grain stored is to be preserved and that (Reg. 5, Sec. 12) the warehouseman shall accept grain for storage and deliver grain out of storage in accordance with the grades of such grain determined by a duly licensed inspector. It is also provided that (Reg. 5, Sec. 16) the warehouseman shall deliver fungible grain to the lawful holder of the warehouse receipt of the grade and quantity named in such receipt.

Sacrificing or rebating storage charges complained of in paragraph 9 (b) of the Rice complaint violates Regulation 5, Sec. 3, providing that no change in charges on file with the Secretary may be made without filing the change in charges with the Secretary together with the reasons therefor.

Sacrificing or rebating storage charges, retaining desirable transit tonnage, and utilizing preferred storage space from an insurance point of view (Rice complaint, paragraphs 9 (b), (c) and (d)) are discriminations covered by the broad language of Section 13 of the United States Warehouse Act (7 U. S. C. § 254) which provides: "That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein" agricultural products. The phrase, "receive for storage" needs no interpretation. It refers to storage of grain during the whole storage process, not merely receiving the grain into store, as is contended (Rice Brief, p. 64). This meaning is further supported by the definition in Section 2 of the Act of a "warehouse licensed under this Act" as a "* * * building in which any agricultural product *is or may be*

stored for interstate or foreign commerce". (7 U. S. C. § 242) (Italics supplied)

Section 13 further provides that agricultural products must be received "without making any discrimination between persons desiring to avail themselves of warehouse facilities." Warehouse "facilities" cover everything used in the operation of the warehouse and in accommodation of its patrons at any time and include storage space, loading of grain, mixing of grain and transit tonnage. Any discrimination, be it self-preference, sacrificing or rebating charges or any other type of discrimination arising in connection with any warehouse facility when grain is stored or thereafter is clearly covered, and the Circuit Court of Appeals so held, stating (156 F. 2d, p. 41, R. 102): "It would appear that this provision gives the Secretary authority to prevent discriminations either in favor of or against any person employing warehouse facilities."

The argument is made (Rice Brief, p. 27) that the purpose of the United States Warehouse Act was to establish "a warehouse receipt that would be more readily accepted as collateral on loans," and to avoid "gross dishonesties" that had been practiced by warehousemen. Now it is argued (Rice Brief, p. 64) that "discrimination" as defined in that Act should be stripped of the broad meaning necessary to achieve this objective and confined merely to discrimination at the time the agricultural product is received for storage. To so limit "discrimination" defeats the very purpose for which Petitioner contends the Act was passed—the protection and validation of federal warehouse receipts.

Each warehouseman agrees as a condition to the granting of his license to abide by all the terms of the Act (Section 4, 7 U. S. C. § 244) and after a hearing the Secretary may under Section 25 revoke a warehouseman's license

"for any violation of this Act or of the rules and regulations made hereunder" (7 U. S. C. § 246).

The power given the Secretary to revoke a federal after a hearing, is as effective as any cease and desist order of the Commission would be, for if any affirmative relief is necessary a federal warehouseman must take the required action or lose his valuable license.

D.

Federally Licensed Warehousemen May Issue United States Warehouse Receipts Showing Themselves as Owners of Grain Stored in Their Own Warehouses.

Paragraph 10 of the Rice complaint (R. 18) alleges that the warehousemen by storing public grain and also dealing in grain violate Article XIII of the Illinois Constitution which, as interpreted by the Illinois Supreme Court in *Hannah* v. *People*, 198 Ill. 77, denies a warehouseman the right to store and deal in his own grain in the public warehouse operated by him.

The United States Warehouse Act in Section 18 (i) authorizes warehousemen to store their own grain by making the following provision with respect to federal warehouse receipts "* * * if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership" shall be shown. (7 U. S. C. § 260 (i))

The regulations under the act provide (Reg. 4, Sec. 1 (c)) that the contents of warehouse receipts shall indicate: "(c) in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship."

Section 5(a) (7) of the Commodity Exchange Act, as amended, was specifically enacted to cover such a situation and provides that receipts issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract * * * notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law." (7 U. S. C. § 7 (a) 7).

As noted from the affidavits filed by Respondents in support of their motion for preliminary injunction (R. 49-62) federal warehouse receipts are outstanding showing them to be the owners of millions of bushels of grain stored in their own warehouses. Their validity is recognized by the foregoing provisions of the United States Warehouse Act and regulations, and the Commodity Exchange Act.

Counsel state (Rice Brief, p. 27) that the purpose of the United States Warehouse Act was "establishing a warehouse receipt that would be more readily accepted as collateral on loans" and that the Act "is essentially a warehouse receipt act." In discussing the 1931 amendment it is stated (Rice Brief, p. 39): "The sole purpose of the amendment was to strengthen the value of warehouse receipts by eliminating conflicting state provisions." While asserting that this was the principal purpose of the Act, counsel now argue (Rice Brief, pp. 60-61) that Illinois law should regulate the terms and provisions of warehouse receipts even though issued by a federally licensed warehouseman and notwithstanding the clear provisions of federal law.

Are the local laws to govern the provisions of a federal warehouse receipt, or shall the United States Warehouse

Act and Commodity Exchange Act govern? If the admitted purpose of Congress is to be effectuated, the value of federal warehouse receipts as collateral must not be endangered or impaired by any conflicting laws of the various states. The Circuit Court of Appeals (156 F. 2d p. 41, R. 101) stated: "To sustain defendants contention on this point would immediately invalidate receipts of the value of millions of dollars. It would seriously impair one of the main purposes of the Act, that is, the integrity of warehouse receipts."

Cf. *Missouri Pacific Railroad Company* v. *Porter*, 273 U. S. 341, in which the Interstate Commerce Act requiring all carriers to establish and enforce just and reasonable regulations affecting the issuance, form and substance of bills of lading, and directing action by the Interstate Commerce Commission to keep informed and to enforce the provisions of the Act, was held to preclude state law concerning bills of lading even though the Commission had not specified the form of such documents.

In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (Rice Brief, p. 61) a Missouri statute prohibiting bucket shops was sustained in a situation involving transactions wholly within Missouri. The statute was held not to be superseded by the Federal Grain Futures Act because there was (p. 200) "nothing in the state law which is inconsistent with or could conceivably interfere with the operation or enforcement of the federal law." Cf. *Albers* v. *Bamson*, 380 Ill. 35, holding that grain futures contracts on the Chicago Board of Trade were not invalid as gambling transactions under Illinois law in view of the paramount authority of Congress exercised in the Commodity Exchange Act legalizing such contracts.

In *Minnesota ex rel. Whipple* v. *Martinson*, 256 U. S. 41 (Rice Brief, p. 61) a Minnesota statute prohibiting phy-

sicians from furnishing drugs to certain persons was held not to be in conflict with the Harrison Anti-Narcotic Drug Act, which required a dispenser of drugs to register with the Collector of Internal Revenue and pay a special tax per annum. The Supreme Court stated (at p. 46) that there was nothing in the Minnesota statute "which interferes with the enforcement of the federal revenue law."

It is suggested (Rice Brief, p. 62) that the application of Illinois law to outstanding federal warehouse receipts would have no effect on "innocent" receipt holders. This, of course, overlooks the fact that under the Federal Act as well as Sec. 2 of the Uniform Warehouse Receipt Act in force in Illinois (Ill. Rev. Stat. 1945, Ch. 114, § 234) if the warehouseman is the owner of grain stored in his own warehouse it must appear on the face of the receipt. This would bring direct notice to all holders of this infirmity, immediately impair negotiability, and thereby defeat the purpose of both the Warehouse and the Commodity Exchange Acts to preserve and protect the validity and negotiability of federal warehouse receipts.

An analogous situation was presented in *Farmers Grain Co.* v. *Langer*, 273 F. 635 (C. C. A. 8th,) aff'd *sub. nom. Lemke* v. *Farmers Grain Co.*, 258 U. S. 50 which held the North Dakota Grain Inspection law invalid as a burden on interstate commerce and because of conflicts with the United States Grain Standards Act. Under the North Dakota law, a purchaser of wheat was required to obtain a state license and to comply with all provisions of the state law, and regulations thereunder, including a requirement that inspection be made at point of origin in North Dakota. Under the federal law, such inspection could be made at point of destination or at some convenient intermediate point. The Court said in this connection (p. 651):

> "Both Acts ought not to be and cannot be enforced without confusion and embarrassment * * *".

It further appeared that, under the Federal Act, an inspector could not be interested financially or otherwise in any grain elevator or warehouse, or in the merchandising of grain, and could not be in the employ of any person owning or operating any grain elevator or warehouse. Under state law, a deputy inspector under the Act was defined as including any firm, person or corporation engaged in buying, weighing and grading grain. In holding that the two laws conflicted, the Court stated (p. 652):

> "Thus one law requires that the inspector shall have no interest in the business and the other law requires that he shall. Which law is to prevail? Certainly the federal law, if the business is interstate commerce. It is useless to discuss further the matter of conflict, for the reason that, if both laws relate to the same subject, the state law attempts to regulate something that the state has no power to regulate, and, Congress having acted, the state law is in direct conflict with the federal law."

E.

Regulation of the Safety of Respondents' Elevators, and Storage of Grain Therein Is Subject to the Exclusive Jurisdiction of the Secretary.

Paragraph 11 of the complaint (R. 18) alleges that certain elevators are unsafe and inadequate requiring exorbitant insurance rates. Paragraph 12 (R. 18) alleges inefficient storage and handling leading to deterioration of grain.

Section 3 of the United States Warehouse Act authorizes the Secretary of Agriculture: "* * * to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products," and "* * * to prescribe * * * the duties of the warehousemen conducting warehouses licensed under this Act

with respect to their care of and responsibility for agricultural products stored therein." (7 U. S. C. § 243) Section 23 provides that the warehouseman shall make reports to the Secretary of Agriculture concerning the condition, contents, operation and business of his warehouse in such form and at such times as the Secretary may require (7 U. S. C. § 264), and Section 24 provides that the Secretary is authorized to examine agricultural products stored in licensed warehouses and to publish his findings. (7 U. S. C. § 265)

The regulations provide (Reg. 5, Sec. 15) that the warehouseman shall keep the warehouse clean and free from accumulation of materials that will increase fire hazard; (Reg. 2, Sec. 5) that a license will not be granted if the warehouse is not suitable for proper storage of grain; (Reg. 5, Sec. 1, par. 3) that the warehouseman shall post a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning or tornado; (Reg. 5, Sec. 8) that the warehouseman shall at all times exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions, and (Reg. 5, Secs. 21-23) contains extensive provisions with respect to condition of grain stored.

The above sections of the Act and regulations also set forth detailed provisions concerning unsafe and inadequate elevators and inefficient storage and handling of grain.

Federal inspectors and examiners, who periodically inspect and examine federally licensed warehouses, keep the Secretary continually advised as to the condition of the elevators and the efficiency of the storage and handling of grain. (See R. 49-62 for affidavits showing periodical inspections of respondents' grain elevators).

Counsel (Rice Brief, p. 65) ignore all the foregoing provisions except a portion of Section 3 of the Act which it is

argued limits the power of the Secretary of Agriculture merely to determining whether a warehouse is suitable for proper storage of agricultural products.

The affirmative power in section 3 authorizing the Secretary "* * * to prescribe * * * the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of, and responsibility for, agricultural products stored therein" gives him exclusive jurisdiction over those charges of the Rice complaint as to unsafe and inadequate elevators and inefficient storage and handling of grain. The warehouseman must conform to the duties prescribed by the Secretary in connection with the foregoing matters or lose his federal license. It is no answer to say that the duties prescribed are in furtherance of the integrity of warehouse receipts (Rice Brief, p. 67). As stated by the Circuit Court of Appeals (156 F. 2d, p. 40, R. 99): "The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts."

Atchison, T. & S. F. R. Co. v. *Railroad Commission*, 283 U. S. 380 (Rice Brief, p. 65), is not in point. In that case, although the Interstate Commerce Commission could not affirmatively order the act done, its approval was required before the state commission could compel construction of a railroad terminal. The Interstate Commerce Act contemplated state action subject to the requirement of a certificate of approval from the Interstate Commerce Commission. No such provision sanctioning state action is found in the United States Warehouse Act. How can a state agency compel additions, repairs and improvements of a federally licensed warehouse when the Secretary alone has the power to determine whether the federal warehouse is suitable and to prescribe the duties in respect

to care and responsibility for agricultural products stored in a federal warehouse? The views of federal and state authorities on such subjects may well differ and result in conflict.

F.

State Control Over Respondents' Contracts and Security Issues Would Hamper the Administration of the United States Warehouse Act.

Paragraph 13 of the Rice complaint (R. 19) alleges that the warehousemen have violated Illinois Statutes by (a) failing to secure Commission approval of contracts with affiliates; (b) failing to secure the Commission's approval of contracts with other public utilities; and (c) failing to secure authority from the Commission to issue securities.

The enforcement by state authorities of the Illinois law sought to be invoked in the above portions of paragraph 13 would hamper the administration of the Federal Act and defeat the intention of Congress. Thus, the Circuit Court of Appeals said (156 F. 2d, p. 40, R. 99):

> "The importance which Congress attached to warehouse receipts is illustrated by the numerous conditions required as a prerequisite to their issuance (See 7 U. S. C. A. § 260). From their very nature it is reasonable to conclude that Congress intended that the federal government take over all authority necessary to preserve their legality, negotiability, safety and value. This in itself required a broad field of control. * * * The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts."

The conflict that would arise if the provisions of Illinois law requiring the approval of the Commission with respect

to contracts, issue of securities, and financing of federal warehouses were applicable is demonstrated by the following example. Let us assume that a federally licensed warehouse is inspected by a federal inspector. As a result the Secretary pursuant to Section 3 of the United States Warehouse Act (7 U. S. C. § 243) requires the warehouseman to install new equipment so as to improve his care of grain, to fireproof his warehouse and remove fire hazards, and to immediately increase and improve numerous warehouse facilities at a cost of $150,000. The warehouseman's federal license would be revoked if he did not make the repairs as directed. To secure the $150,000 the warehouseman enters into contracts with an affiliate and another utility under which he borrows $100,000 payable out of current earnings. He issues $50,000 worth of debenture bonds for the balance.

Are these transactions subject to state approval when refusal would cause the revocation of his federal license? Is the Secretary's power limited by state approval? To require state regulation of such corporate transactions would clearly hamper the administration of the Federal Act. The Circuit Court of Appeals therefore properly concluded in connection with the foregoing charges in paragraph 13 of the Rice complaint that (156 F. 2d p. 43, R. 104) "'the Secretary has implied authority to deal there[illegible] with."

The silence of the United States Warehouse Act on the matters involved in this collateral portion of the Rice complaint indicates that Congress did not intend that such matters be supervised by state authorities, and its failure to expressly deal with these matters lends no support to Petitioners' position.

In *Oregon-Washington Railroad & Navigation Co.* v. *State of Washington*, 270 U. S. 87 the State of Washington

attempted to establish a quarantine against the importation of farm produce contrary to a federal law investing the Secretary of Agriculture with full authority over this subject. In precluding state action the Court said (p. 102):

> "* * * It is suggested that the States may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the States to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that can not be given to the federal statute. The obligation to act without respect to the States is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted."

See also Bikle, *The Silence of Congress*, 41 Harv. L. Rev. 200, 211 (1927), and the cases cited at pp. 23, 24, *supra*.

G.

Petitioners Concede the Secretary's Exclusive Jurisdiction Over Filing and Publishing of Charges.

Paragraph 13(d) (R. 19) of the complaint alleges that respondents failed to file, print and publish schedules of rates and charges and paragraph 13(e) charges that they have rendered services without filing and publishing rates, rules and regulations.

The regulations provide (Reg. 5, Sec. 3) that before a license is granted, the warehouseman must file with the Department of Agriculture a copy of his rules and a schedule of charges to be made by him if licensed. Any change in charges or rules must also be filed with the Department. A copy of the current rules and regulations must be posted in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to the depositors.

Respondents have each accordingly filed with the Secretary its schedules of rates and charges. Rice Petitioner in its brief makes no mention of the above portions of paragraph 13 of the complaint, and apparently it has abandoned this charge and conceded exclusive jurisdiction in the Secretary.

H.

A Federal Warehouseman Need Not Secure State Consent to Abandon His Warehouse.

Paragraph 13(f) (R. 19) of the complaint charges abandonment and discontinuance of service by the warehousemen without consent of the commission.

Section 5 of the United States Warehouse Act provides that a license shall terminate as therein provided or in accordance with the terms of the United States Warehouse Act and regulations thereunder. (7 U. S. C. § 245.) The regulations provide (Reg. 2, Sec. 7) that the Secretary may suspend the license where a warehouseman for any reason ceases to conduct a licensed warehouse and further that in such a case the warehouseman is under duty to notify the Department of the situation.

We submit that this provision is sufficient to protect the public interest. Congress did not deem it necessary to make any further provision, and require more. The fact that state laws may require the consent of a state agency before a warehouseman may discontinue his business, is merely indicative of another conflict between state and federal law.

Section 3 of the United States Warehouse Act also provides that the Secretary shall determine whether the warehouses of a federal licensee are suitable for storage of agricultural products (7 U. S. C. § 243). Assume that after an inspection of one of a federal licensee's warehouses it is

found unsuitable for storage of agricultural products, and that the warehouse cannot be repaired. Unless it is abandoned the warehouseman will lose his federal license. Is the state to have jurisdiction to permit or refuse this abandonment? Clearly, Congress never intended to allow a state agency to decide whether or not a federal licensee should lose his license. Once again the necessity for the "exclusive" power given the Secretary by Congress is evident. Furthermore, any voluntary abandonment of essential service by a federal warehouseman would be immediate grounds for a revocation of his federal license under Section 25 of the Act (7 U. S. C. § 246).

Thus the Circuit Court of Appeals properly sustained the Secretary's exclusive jurisdiction over abandonment of federally licensed warehouses when it stated (156 F. 2d, p. 40, R. 103):

"The mere issuance of a federal license carries with it the representation of a determination by the Secretary that the warehouse is suitable for the storage of grain. Suppose the Commission should find that the same warehouse should be abandoned. We think this would present a direct conflict between the Secretary and the Commission."

I.

A Federally Licensed Warehouseman May Operate Without a State License.

Paragraph 13(h) (R. 19) of the complaint alleges that the warehousemen are operating without a State license.

The United States Warehouse Act provides in Sections 3, 4 and 5 that the Secretary of Agriculture is authorized to issue a warehouseman a license provided the warehouse is suitable for proper storage and the warehouseman agrees to comply with the Act and regulations. (7 U. S.

C. §§ 243-245.) Section 29 of the Act provides that the power, jurisdiction and authority of the Secretary of Agriculture under the Act is exclusive with respect to all persons having a federal license (7 U. S. C. § 269).

In re Farmer's Cooperative Association, 8 N. W. 2d 557, p. 21, *supra*, squarely holds that a federal licensee under the United States Warehouse Act is neither subject to state statutes nor required to submit to state licensing provisions. It is submitted that this decision is sound and should be followed. Rice Petitioner makes no mention of the above charge in its brief here and apparently now concedes that a federally licensed warehouseman may operate without a state license.

Conclusion.

It thus appears as was stated by the Circuit Court of Appeals that (156 F. 2d, p. 43, R. 104), "all of the matters charged in the Rice complaint, on which the Commission has assumed jurisdiction and is about to act, concern directly or indirectly the operation of federally licensed warehouses and the storage of grain therein for which receipts are issued. The allowance of such relief by the Commission on the charges thus made would conflict with the Warehouse Act or 'plainly and palpably infringes its policy.' The exercise of such authority by the commission would thwart the primary purpose which Congress sought to accomplish."

In the instant case, we are dealing with a problem of vital national concern involving the vast interstate and international flow of millions of bushels of grain through Respondents' elevators and the Chicago market annually. Congress, having in mind the desirability of a uniform system of warehouses to facilitate the marketing and financing of agricultural products, and fully recognizing from

experience gained in the administration of this, and other comparable statutes, the confusion and inconsistencies that would be inevitable in overlapping state and federal regulation, clearly intended by the 1931 Amendments to foreclose state action in this field.

Respondents therefore submit that in determining the issue before this Court as to whether federally licensed warehouses are to be subject to the multiple rules and regulations of the various states, the conclusion is inescapable that Congress intended that only one authority—the Secretary of Agriculture—should regulate such warehouses as to the matters here in controversy, and that this Court should affirm the judgment of the Circuit Court of Appeals.

Respectfully submitted,

FERRE C. WATKINS,
CHARLES F. MEYERS,
Attorneys for Respondents, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, and Stratton Grain Company.

FLOYD E. THOMPSON,
FREDERICK MAYER,
A. L. RITTENBERG,
Attorneys for Respondent, Continental Grain Company.

CARL MEYER,
LEO F. TIERNEY,
LOUIS A. KOHN,
Attorneys for Respondents, Rosenbaum Brothers and Cargill, Incorporated.

Chicago, Illinois.
February 6, 1947.

APPENDIX.

Statements of Representative Lever, Sponsor of the Bill.

(Congressional Record, Vol. 53 Pt. 6, pp. 5924-5925, Apr. 11, 1916.)

"Mr. Lever: If Congress intends or desires to furnish to agriculture the same facility for credit which the reserve act now affords to commerce, ways and means must be devised which will give to agricultural security those same characteristics as have enabled the security of the merchant and other classes of people always to command credit. To meet this situation, to give negotiability to the paper of the farmer, we propose under the terms of the warehouse bill to set up a system of warehouses licensed and bonded under Federal authority for the storage of specified, nonperishable agricultural products. And upon such products, so stored, uniform receipts will issue, the grades and weights of the products specified therein having been determined previously by licensed weighers and graders in accordance with Government standards. The machinery is simple, and experience shows it to be effective.

"What is it? It contemplates a warehouse, bonded and under the control of a bonded and licensed warehouseman, to safeguard the product or security. It provides for the licensed weigher and grader which guarantees impartial and competent judgment as to the quantity and quality of the product. The quality of the product is measured by the Government standard of grade, which assures both correctness and uniformity of measurement.

"Each and all of these important and essential facts find expression in the face of the storage or warehouse

receipt. The workability of the entire plan depends ultimately and necessarily upon the absolute integrity of this receipt and especial care has been taken to see to it that the receipt in all cases speaks the facts with unquestioned verity. To be certain that such a receipt is provided and we have followed as closely as possible the form of receipt issued under the uniform warehouse receipts act, in force in 31 States of the Union, which has become more or less a standard form in the channels of commerce."

* * * * *

[Mr. Lever then quoted from a letter from Hon. W. P. G. Harding, from which the following excerpt is taken.]

"'The physical conditions attached to the warehouse must be considered. It must be so constructed as to afford adequate protection from the elements for cotton stored in it and it should be built in such a manner and of such materials as to provide for its contents a low insurance rate. The ownership and management of the warehouse must be responsible so that holders of receipts for goods stored in it may feel assured that the commodities represented by the receipts will, under all circumstances, be in the warehouse awaiting the return of the receipts. Furthermore, the banks and others making loans against warehouse receipts for cotton must be protected against adverse liens, and must be satisfied that the pledgor of the commodities covered by the receipt has a good and legal title to such commodities. The bill seems to recognize all of these points and it provides for proper inspection of warehouses, for the exercise of reasonable care on the part of the owners of warehouses receiving goods for storage, and further protects holders of receipts by requiring that the warehouses be bonded.'"

* * * * *

"A Federal warehouse law insures beyond doubt uniformity in character of warehouses, uniformity in methods

of inspection, uniformity in methods of weighing and grading, uniformity in the standard of measurement—grade—and above all, and more important than all, such a system provides for a uniform warehouse receipt, or credit instrument, for the same product in every State in the Union. Each receipt, whether issued from a warehouse in Texas or in South Carolina for a like product will carry on its face the same story and will be issued under the same rules and regulations and protected by the same law. Such a receipt must be of the highest collateral value and it is my belief that it would flow at once into the general system of securities and become realizable upon at any time in the general market of securities."

* * * * *

P. 7085. "Mr. Lever: Mr. Chairman, this bill undertakes to do three things: First, it seeks to standardize warehouses in this country with a view to reduce as much as possible the insurance rates upon such warehouses and upon the products stored therein. There is a great divergence of insurance rates on warehouses in this country, due largely to the fact that there is no proper standardization.

"It undertakes, in the second place, to standardize the methods of grading farm products with a view to give most impartial and accurate grade to all agricultural products. The system of grading in this country is likewise absolutely understandardized, with the result that agricultural products are suffering greatly because of it. We are undertaking here to have a system of grading for the same kind of product in every community in which the product is raised.

"In the third place, it undertakes to standardize warehouse receipts on agricultural products so as to give them collateral value for borrowing money, for taking advantage of the Federal reserve act which they do not now possess.

"There is no reason in the world why there should not grow up in this country a system of warehouses uniform in their character, uniform in their methods, with receipts uniform in all sections of the country for the same class of agricultural products. When that warehouse receipt issues on 10 bales of cotton in Lexington, S. C., it will be just as negotiable in Texas or New York as it would be if it was issued from a warehouse on 10 bales of cotton in Texas. Under the present hodgepodge system, which is no system at all, the farmer has no method of knowing the means by which he can take these products, store them, and in the end have some voice as to the price at which he is willing to part with them. That is the great fundamental purpose of this warehouse bill. It is an effort upon the part of Congress, upon the part of the Agricultural Committee, to give as far as we can greater strength, more uniformity, and greater negotiability to farm collateral paper, so men may borrow money upon easier terms, so the receipts may be standardized and interest may be cheaper and credit easier. So much for that."

SENATE COMMITTEE REPORT (1931) (S. REPT., 1775, 71ST CONG. 3RD SESS.)

The Committee on Agriculture and Forestry, to whom was referred the bill (H. R. 7) to amend Sections 4, 6, 8, 9, 10, 11, 12, 25, 29, and 30 of the United States warehouse act, approved August 11, 1916, as amended, having considered same, report thereon with the recommendation that the bill do pass.

The United States warehouse act was passed in August 1916. For the first five years little progress was made. During the past ten years substantial progress has been made. Two commodities illustrate these facts. By April 1, 1920, but 23 cotton warehouses, with 43,250 bales combined

storage capacity, were licensed. On February 24, 1931 there were 362 cotton warehouses with 4,881,459 bales capacity. On April 1, 1920, five grain warehouses with a total of 146,000 bushels storage capacity were licensed, while on February 24, 1931, 335 grain warehouses were licensed with an aggregate storage capacity of 76,519,792 bushels.

Since the passage of the act it has been used by all kinds of growers, organizations and hundreds of thousands of farmers. Their warehouse receipts have found acceptable outlets among the intermediate credit banks, with the federal farm board and with leading bankers of the country. Billions of dollars have been loaned on these receipts.

The act has demonstrated beyond question its usefulness in the marketing of our agricultural products. But experience has demonstrated that it can and should be strengthened. With that in mind, the amendments embodied in H. R. 7 are offered. These amendments may be treated in four groups.

The first group includes the amendments to Sections 4, 6, 8, 9, 11, 12, and 25. The substance of these amendments is merely to authorize the Secretary of Agriculture to designate an official of the Department to act for the Secretary in performing certain ministerial duties, such as the accepting or denying of applications, approving of bonds filed by warehousemen, issuing, suspending, reinstating, and cancelling of licenses, and charging and assessing fees.

The next amendment eliminates from Section 6 of the present act the clause which provides that the bond shall secure the faithful performance of the warehouseman's obligations as defined by State laws. Since the act does not give the department jurisdiction to enforce State laws, it is obviously unfair that a bond should be exacted of a warehouseman to satisfy State laws. Such a requirement subjects the bond to greater exposure of liability and naturally such increased exposure is reflected in the rates

charged for bond premiums. Moreover, if the bond is available under State acts this may result in taking away from Federal receipts some of the very best security that the Federal act contemplates shall be available for their protection. Again this amendment to Section 6 naturally follows the amendment suggested to Section 29.

Section 10 of the present act permits the charging of a warehouse inspection and license fee, but does not authorize charging a fee for license to sample, inspect, classify, grade, or weigh agricultural products stored in licensed warehouses. The amendment would authorize the charging of fees for such licenses.

Section 29 of the act now provides "That nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen," etc. The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom. It does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal Act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. Bankers have repeatedly pointed out that this section of the warehouse

act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency.

The amendment to Section 30 provides for punishing anyone who may after a warehouse receipt or certificate with intent to negotiate the same, but who may be defeated in its negotiation. It also increases the severity of the penalty section by leaving it discretionary with the court to impose a jail sentence not in excess of ten years, as compared to the maximum now of one year. In the light of some frauds which might be perpetuated a one-year jail sentence does not appear proportionate to the offense. Bankers have repeatedly expressed the view that the penalties which might be imposed for wrongdoing should be more severe.

This legislation is approved by both the Department of Agriculture and the Federal Farm Board, as evidenced by the following letters:

February 13, 1931.

Hon. Charles L. McNary
Chairman, Committee on Agriculture and Forestry
United States Senate

DEAR SENATOR:

I have your request for report on the bill H. R. 7, which relates to amendments to the United States warehouse act. This bill was passed by the House on May 7, 1930, and is identical with H. R. 16720, which passed the House during the 70th Congress. H. R. 7 also is identical with S. 1202, now pending. Except for a few changes, these bills are the same as the bills you introduced in the 70th congress, which was intended to amend the United States warehouse act in line with suggestions offered by this department.

In letters from this department dated December 28, 1928, and February 2, 1929, the department expressed itself as being in favor of this legislation, and urged its passage. The changes referred to above were indicated in the said letter of February 2, 1929. The department, therefore, is in accord with the principles underlying the amendments suggested in H. R. 7 and believes their adoption will enhance the value of the United States warehouse act and facilitate its administration.

Sincerely yours,

ARTHUR M. HYDE,
Secretary.

May 28, 1930.

Hon. Charles L. McNary
United States Senate

DEAR SENATOR:

The Farm Board is very deeply interested in the proposed amendment to the warehouse act, known as H. R. 7, for the reason that at the present time there is certain conflict in the warehouse measures as between the State and the Federal Governments, which is sought to be cleared up by this amendment.

May we ask your best efforts to secure the passage of this measure.

Very truly yours,

Chairman, Federal Farm Board.

HOUSE COMMITTEE REPORT (1930) (H. REPT. 4, 71ST CONG., 1ST SESS.)

The Committee on Agriculture, to whom was referred the bill (H. R. 7) to amend sections 4, 6, 8, 9, 10, 11, 12, 25, 26, 29, and 30 of the United States Warehouse Act, approved August 11, 1916, having considered the same, report thereon with a recommendation that it do pass. The bill reported herewith reads as follows:

* * * * *

This bill amends sections 4, 8, 9, 11, 12, and 25 of the present act by merely inserting after the words "the Secretary of Agriculture" the words "or his designated representative". In the law as at present the Secretary is charged with accepting and approving bonds, signing licenses, and suspending, cancelling, or revoking licenses. As the determinations of the facts upon which the Secretary must act involve a great many details and must be made by subordinates and as the Secretary is charged with the

administration of quite a number of regulatory statutes, it becomes impossible for him to personally perform many of these duties which are more or less administrative detail. Therefore, the committee recommends that authority be given the Secretary to designate a representative to perform such acts as accepting and approving bonds furnished by warehousemen and the issuance, suspension, cancellation, and revocation of licenses.

One of the amendments proposed to Section 6 of the present act is to insert the words "or his designated representative" following the words "the Secretary of Agriculture". The same reason applies in this case as mentioned in the preceding paragraph. Under the present law, Section 6 requires that a warehouseman desiring a license under the law shall file a bond with the Secretary of Agriculture to secure the faithful performance of his obligations as a warehouseman "under the laws of the State, District, or Territory, in which he is conducting such warehouse", as well as under the Federal warehouse act. It is proposed to eliminate that part of Section 6 of the act which requires that the bond cover obligations of the warehouseman under State laws. Frequently a warehouseman may be operating more than one warehouse. To meet the demands of certain depositors, he may want to license one of the warehouses under the Federal law. As the law now stands, he must file a bond with the Secretary of Agriculture before a license could be granted him, and this bond would not only cover his obligations under the Federal law but would apply equally to obligations under State laws, though the particular obligations in question may have been undertaken in a house which is not licensed under the Federal law. Of course the Federal Government has no jurisdiction over the non-licensed house; neither has it authority to enforce the State laws. The result might, therefore, very easily develop that a warehouseman commits some illegal act in the ware-

house which is not under the Federal act, but the bond which was furnished for the protection of depositors storing their products in the federally licensed warehouse might be exhausted under the State law. In fact, a recent decision in one of the State courts held that the bond furnished under the Federal act was liable for receipts not issued by the warehouseman under the Federal act.

Under Section 10 of the present law, the amount to be charged for a warehouseman's license is fixed at $2.00. No charge is authorized for issuing licenses to inspectors, weighers, graders, or samplers. Under the proposed amendment to this Section, the Secretary would be authorized to charge such a license fee as he deems reasonable whenever a license is issued to either a warehouseman, a sampler, inspector, weigher, or grader.

Under Section 29 of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain. Bankers generally have recognized the worthy purposes of the warehouse act, but when they are approached to loan large amounts they view section 29 of the present law with considerable misgiving. To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom.

It is believed that the amendments embodied in this bill will give the warehouse receipts issued under the Federal warehouse act such collateral value as to command the confidence of all bankers and will place this law on a firm

foundation. In view of the fact that most of the big cooperative organizations of growers that are obliged to store their products are using warehouse receipts issued under the Federal warehouse act as collateral to loans, the amendments proposed are in the interests of orderly marketing of agricultural products both by the individual farmer and cooperative organizations. Inasmuch as these large cooperative growers' organizations require millions of dollars to adequately finance them during the marketing period, the committee feels that nothing should be left undone in perfecting the Federal warehouse act so that it will accomplish to the maximum the intent of Congress.

The Federal warehouse act has been in operation since 1916, and has exerted a helpful influence in the marketing of farm products. Warehouse receipts issued under the act have been favorably recognized and accepted by bankers in all parts of the country, as well as by the Federal reserve banks and intermediate credit banks. The need for storing farm products under the most favorable conditions will be naturally increased as a result of the farm relief legislation now receiving the attention of Congress. Although the act was amended in 1919 and again in 1923, experiences of the past five years have demonstrated the desirability of further amending the act. The present legislation therefore was introduced in the Seventieth Session of Congress at the request of the Department of Agriculture, favorably reported by the committee, and passed by the House on February 25, 1929. The committee believes that the further amendment of the act, as herein indicated, will facilitate its administration and further extend its usefulness in the marketing of farm products.

S. R. A.—B. A. E. 127, revised. Issued June 1931; Reissued June 1938 as amended

United States Department of Agriculture

BUREAU OF AGRICULTURAL ECONOMICS

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 127, REVISED

REGULATIONS FOR WAREHOUSEMEN STORING GRAIN, AS AMENDED

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY.

By virtue of the authority vested in the Secretary of Agriculture by the United States warehouse act, approved August 11, 1916 (39 U. S. Stat. L., pp. 446, 486), as amended, I, Arthur M. Hyde, Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following rules and regulations, to be known as the regulations for grain warehousemen, and to be in force and effect until amended or superseded by rules and regulations hereafter made by the Secretary of Agriculture. These rules and regulations shall supersede all rules and regulations issued under said act heretofore for grain warehousemen.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 9th day of May, 1931.

Arthur M. Hyde

Secretary of Agriculture.

REGULATIONS FOR GRAIN WAREHOUSEMEN UNDER THE UNITED STATES WAREHOUSE ACT

Regulation 1. Definitions

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. Words import singular or plural.

SEC. 2. For the purpose of these regulations, unless the context otherwise require, the following terms shall be construed, respectively, to mean— Terms defined.

Paragraph 1. The act.—The United States warehouse act, approved August 11, 1916 (39 U. S. Stat. at L. pp. 446, 486), as amended. The act.

Par. 2. Person.—An individual, corporation, partnership, or two or more persons having a joint or common interest. Person.

Par. 3. Department.—The United States Department of Agriculture. Department.

Par. 4. Secretary.—The Secretary of Agriculture of the United States. Secretary.

Par. 5. Designated representative.—The chief of the bureau. Designated representative.

Par. 6. Chief of the bureau.—The Chief of the Bureau of Agricultural Economics. Chief of the bureau.

Par. 7. Bureau.—The Bureau of Agricultural Economics of the United States Department of Agriculture. Bureau.

Par. 8. Regulations.—Rules and regulations made under the act by the Secretary. Regulations.

Par. 9. Dockage.—Dockage in grain as defined by the official grain standards of the United States. Dockage.

Grain.

Par. 10. Grain.—All products commonly classed as grain, such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, grain sorghums, and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the chief of the bureau.

Nonstorage grain.

Par. 11. Nonstorage grain.—Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no receipts are issued and no storage charges assessed, provided that merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as nonstorage grain.

Warehouse.

Par. 12. Warehouse.—Unless the context otherwise clearly indicates, any building, structure, or other protected inclosure licensed or to be licensed under the act, in which grain is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States in which grain is or may be stored.

Bin.

Par. 13. Bin.—A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

Warehouseman.

Par. 14. Warehouseman.—Any person lawfully engaged in the business of storing grain, who holds an effective warehouseman's license under the act, or who has applied for such a license.

License.

Par. 15. License.—A license issued under the act by the Secretary, or his designated representative.

Warehouseman's bond.

Par. 16. Warehouseman's bond.—The bond required by the act to be given by a warehouseman.

Inspector.

Par. 17. Inspector.—A person licensed under the act by the Secretary, or his designated representative, to inspect and grade and/or certificate the grade of grain stored or to be stored in a warehouse licensed under the act.

Weigher.

Par. 18. Weigher.—A person licensed under the act by the Secretary, or his designated representative, to weigh and/or certificate the weight of grain stored or to be stored in a warehouse licensed under the act.

Grain standards act.

Par. 19. Grain standards act.—The United States grain standards act, approved August 11, 1916 (39 U. S. Stat. at L. pp. 446, 486).

Official grain standards of the United States.

Par. 20. Official grain standards of the United States.—The standards of quality or condition for grain, fixed and established by the Secretary under the grain standards act.

Receipt.

Par. 21. Receipt.—A licensed warehouse receipt issued under the act.

Regulation 2. Warehouse Licenses

Application form.

SECTION 1. Applications for licenses and for amendments of licenses under the act shall be made to the Secretary upon prescribed forms furnished by the bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

Scales.

SEC. 2. *Paragraph 1.* Each warehouse must be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the department and to disapproval by the chief of the bureau. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of grain for the purposes of this act, until such disapproval be withdrawn.

Bins, compartments, etc., to be numbered in an approved manner.

Par. 2. Both bulk grain bins and compartments for sacked grain of all warehouses licensed under the act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the bureau

Bulk grain bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.

Signs of tenancy to be posted.

SEC. 3. *Paragraph 1.* Every warehouseman operating a "field" or "custodian" warehouse shall, during the life of his license, display and maintain appropriate signs on the licensed warehouse, both on the inside and on the exterior walls of the warehouse, and particularly on doors and usual places of entry, in such a manner as will ordinarily be calculated to give the public correct notice of his tenancy of all buildings or parts thereof included in his license.

Wording of signs.

PAR. 2. Such signs shall be of such size and design as to readily attract the attention of the public and shall include the following: (*a*) The name and license number of the licensee, (*b*) the name of the warehouse, (*c*) whether the warehouseman is owner or lessee, and (*d*) the words "public warehouse."

Other wording permitted.

PAR. 3. Such other wording or lettering may appear in the sign or signs not inconsistent with the purpose of the act and these regulations as may be approved by the chief of the bureau.

Signs to be removed upon expiration or suspension of license.

PAR. 4. Immediately upon its expiration or suspension or revocation all reference to the license shall be removed from the warehouse.

Other signs prohibited.

PAR. 5. No sign indicating control, tenancy, or ownership of a licensed warehouse by any person other than the licensee shall appear on any such warehouse.

Net assets.

SEC. 4. *Paragraph 1.* The warehouseman conducting a warehouse for which application for license has been made, shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least 10 cents per bushel of its licensed grain storage capacity, determined in accordance with regulation 8, section 2, paragraph 1, except that the amount of such assets shall not be less than $5,000 and need not be more than $100,000. In case buildings, machinery, or merchandise are included among such assets, the warehouseman shall procure and maintain insurance fully to protect such property against loss or damage by fire. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located.

Assets for two or more warehouses.

PAR. 2. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purpose of the assets required under this section, and such warehouseman shall have and maintain above all exemptions and liabilities, net assets adequately protected by insurance against loss or damage by fire, liable for the payment of any indebtedness arising from the conduct of any of such warehouses, to the extent of at least 10 cents per bushel of their aggregate grain storage capacity except that the amount of such assets need not be more than $100,000.

Deficiency.

PAR. 3. For the purpose of paragraphs 1 and 2 of this section only, capital stock, as such, shall not be considered a liability. A deficiency in assets may be supplied by an increase in the amount of the warehouseman's bond equal to such deficiency.

Grounds for not issuing license.

SEC. 5. A license for the conduct of a warehouse, or any amendment to a license, shall not be granted if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of grain, that the warehouseman does not possess a good reputation or is insolvent or incompetent to conduct such warehouse in accordance with the act and these regulations; that the warehouseman has failed to comply with these regulations, or that there is any other sufficient reason within the purposes of the act for not issuing such license.

License or extension shall be posted.

SEC. 6. Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post same, and thereafter, except as otherwise provided in these regulations, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

Suspension or revocation of warehouse licenses.

SEC. 7. Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (*a*) is bankrupt or insolvent; (*b*) has parted, in whole or in part, with his control over the licensed warehouse; (*c*) is in process of dissolution or has been dissolved; (*d*) has for any reason ceased to conduct such licensed warehouse; or (*e*) has in any other manner become incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in subdivisions (*a*) to (*e*) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the chief of the bureau of the existing condition. Before a license is revoked for any violation of, or failure to comply with, any provision of the act or of these regulations, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4.

Return of terminated, suspended, or revoked warehouse license.

SEC. 8. In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued and it shall be posted as prescribed in section 6 of this regulation: *Provided*, That in the discretion of the Secretary, or his designated representative, a new license may be issued without reference to the suspension.

Lost or destroyed warehouse license.

SEC. 9. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof, or a new license may be issued under the same number.

Unlicensed warehousemen must not represent themselves as licensed.

SEC. 10. No warehouse or its warehouseman shall be designated as licensed under the act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

Regulation 3. Warehouse Bonds

Time of filing

SECTION 1. Unless the warehouseman has previously filed with the Secretary the necessary bond required by section 2 of this regulation, he shall file such bond within a time, if any, specified by the Secretary, or his designated representative, said bond to cover all obligations arising thereunder during the period of the license.

Amount based on storage capacity.

SEC. 2. *Paragraph 1.* Exclusive of any amount which may be added in accordance with paragraphs 2 and 3 of this section, the amount of such bond shall be fixed at the rate of 5 cents per bushel of the maximum number of bushels that the warehouse will accommodate when stored in the manner customary to the

warehouse for which such bond is required, as determined by the chief of the bureau, but not less than $5,000 nor more than $50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and these regulations, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under this regulation. The amount of said bond shall be fixed at the rate of 5 cents per bushel of the maximum number of bushels that all of said warehouses will accommodate when stored in the manner customary to each of such warehouses for which such bond is required, as determined by the chief of the bureau, but not less than $5,000 nor more than $50,000.

Bond covering two or more warehouses.

Par. 2. In case of a deficiency in net assets, there shall be added to the amount fixed in accordance with paragraph 1 of this section an amount equal to such deficiency.

Additional amount for deficiency in net assets.

Par. 3. In case the Secretary, or his designated representative, finds the existence of conditions warranting such action, there shall be added to the amount fixed in accordance with paragraph 1 of this section a further amount to meet such conditions.

Additional amount for special conditions.

SEC. 3. In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under this regulation covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and these regulations, may be filed in lieu of a new bond.

Extension bond.

SEC. 4. A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year prior to the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him or his designated representative.

New bond required to continue license beyond one year.

SEC. 5. No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and these regulations until it has been approved by the Secretary, or his designated representative.

Approval of bond.

Regulation 4. Warehouse Receipts

SECTION 1. *Paragraph 1.* Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (*a*) The name of the warehouseman and the designation, if any, of the warehouse, (*b*) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (*c*) in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (*d*) a statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise, (*e*) the net weight, including dockage, if any, of the grain, (*f*) in the case of grain the identity of which is to be preserved, its identification or location in accordance with section 13 of regulation 5, (*g*) the words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon, and (*h*) that the holder of the re-

Contents of negotiable and nonnegotiable receipts.

ceipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one year from the date of the receipt.

Storage period.

Par. 2. Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one year, for which the grain is accepted for storage under the act and these regulations. Upon demand and surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of grain in his warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period, not exceeding one year; provided it is actually determined by a licensed inspector that the grain has not deteriorated and that it is in proper condition for storage for another year.

Additional contents of negotiable receipts.

Par. 3. Every negotiable receipt issued shall, in addition to conforming with the requirements of paragraph 1 of this section, embody within its written or printed terms, a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.

Grade of grain.

Par. 4. The grade stated in a receipt shall be stated in accordance with regulation 8, as determined by the inspector who last inspected and graded the grain before the issuance of such receipt, or if an appeal from the determinations of such inspector has been taken either under the grain standards act and regulations thereunder or under regulation 9 of these regulations, the grade shall be stated on such receipt in accordance with the grade as finally determined in such appeal. If the final grade thus determined be different from that shown by the receipt issued for such grain, the warehouseman shall, upon the return of the old receipt, if the same is not already in his possession, issue a new receipt stating such final grade.

When grade omitted receipt must be so marked.

Par. 5. If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor."

Blank spaces in receipt to be filled in.

Par. 6. If a warehouseman issues a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made purposely by the warehouseman.

Grain must be inspected and weighed. Dockage must be stated.

SEC. 2. *Paragraph 1.* Except in case of identity preserved grain, when the grading is omitted at request of depositor, no receipt shall be issued under the act or these regulations until the grain covered by such receipt has been inspected and graded by a person duly licensed to inspect and grade such grain and to certificate the grade thereof, and been weighed by a person duly licensed to weigh such grain and to certificate the weight thereof. The receipt issued to cover such grain shall show the grade, including percentage of dockage, if any, condition, and weight, in conformity therewith.

Grading identity preserved grain must be omitted on depositor's request.

Par. 2. When requested by the depositor of grain the identity of which is to be preserved, a receipt omitting statement of grade but not weight may be issued.

Nonstorage grain shall be graded and weighed.

Par. 3. All fungible nonstorage grain received into and delivered out of a warehouse must be correctly inspected, graded, and weighed by a licensed inspector and/or weigher.

Copies of receipts.

SEC. 3. Any copies of receipts, except those issued in lieu of the original in case of lost or destroyed receipts, shall have clearly and conspicuously printed or stamped thereon the word "Copy—Not Negotiable." If exact copies are not made, skeleton copies bearing the same numbers as the corresponding original receipts bear, shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."

Lost or destroyed receipts.

SEC. 4. *Paragraph 1.* In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph 2 of this section.

Affidavit of loss or destruction of receipts.

Par. 2. Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with him (*a*) an affidavit showing that the applicant is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (*b*) a bond in an amount double the value, at the time the bond is given, of the grain represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

Bond for lost receipts.

Approval of forms and printing of receipts.

SEC. 5. Receipts issued by a warehouseman shall be (*a*) in form prescribed by the chief of the bureau, (*b*) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (*c*) on distinctive paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

Partial delivery of grain.

SEC. 6. If a warehouseman delivers a part only of a lot of grain for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with these regulations for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

Return of receipts before delivery.

SEC. 7. Except as permitted by law or by these regulations a warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver grain for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

Persons to whom nonnegotiable receipts are issued must furnish warehouseman with names and signatures of parties empowered to make releases.

SEC. 8. Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of grain covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

Warehouseman not to attempt to compel grade to be omitted.

SEC. 9. No warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any grain stored or offered for storage in his warehouse to request the issuance of a receipt omitting the statement of grade.

Loading out without weighing.

SEC. 10. When the lawful holder of one or more receipts covering an entire lot of identity preserved grain or a mass of grain stored in a single bin requests the warehouseman to deliver

said lot or mass without reweighing said grain, the warehouseman may make such delivery if there is an accurate record of the weight of such grain when received. Such deliveries shall be made only when the lawful holder of the receipts agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the grain in the container have been surrendered to the warehouseman and canceled. After the receipts covering such grain have been surrendered for cancellation no other grain shall be placed in the bin until the entire lot has been delivered.

Persons authorized to sign receipts.

SEC. 11. Each warehouseman shall file with the department the name and genuine signature of each person authorized to sign warehouse receipts for the warehouseman, and shall promptly notify the department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

Weight and inspection certificates must be filed as basis for issuing receipts.

SEC. 12. Before issuing any receipt under the act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of grain, first obtain either a copy of or the original weight certificate, and inspection certificate, if any, covering said lot of grain, and said weight and grade certificates shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the grain covered by such certificates shall be written on the certificate before filing.

Receipts to be issued for all stored grain.

SEC. 13. Receipts must be issued for all grain stored in a warehouse. Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds and grades of all lots of nonstorage grain received into and delivered from his warehouse. Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery period from the warehouse becomes indeterminate, receipts shall be issued to cover such grain.

Nonstorage grain records.

Receipts must be issued if it becomes stored.

Receipts shall not be issued for "screenings."

SEC. 14. No receipt shall be issued for any product or by-product which would fall under the term "screenings."

Canceled receipts to be forwarded to bureau for auditing.

SEC. 15. Each warehouseman, if requested by the bureau, shall forward his canceled receipts for auditing to such field offices of the bureau as may be designated from time to time.

Regulation 5. Duties of Warehouseman

Insurance against fire, lightning, or tornado.

SECTION 1. *Paragraph 1.* Each warehouseman, when so requested in writing as to any grain by the depositor thereof or lawful holder of the receipt covering such grain, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such grain while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage by fire, lightning, and/or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the grain is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all grain stored in his warehouse.

Must comply with insurance terms.

Par. 2. Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts nor permit his employees to do anything, which might impair or invalidate such insurance.

Par. 3. Each warehouseman shall keep exposed conspicuously in the place prescribed by regulation 2, section 6, and at such other place as the chief of the bureau or his representative may from time to time designate, a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning, and tornado. Notice regarding insurance to be posted.

Par. 4. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of these regulations, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts. Premiums, inspections, and reports.

Par. 5. Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of these regulations, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him. Warehouseman to collect and pay over insurance.

Par. 6. If at any time a fire shall occur at or within any warehouse, it shall be the duty of the warehouseman to report immediately by wire to the chief of the bureau the occurrence of such fire and the extent of damage. Fire loss to be reported by wire

SEC. 2. Each warehouseman shall provide a fireproof safe, vault, or compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of issued and canceled receipts, except that with the written consent of the bureau, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books and papers in some other place of safety, approved by the bureau. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter. Records to be kept in safe place. Canceled receipts to be kept in numerical order.

SEC. 3. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the department a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the department a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by regulation 2, section 6, and at such other place, accessible to the public, as the bureau may from time to time designate, a copy of his current rules and schedule of charges. Warehouse charges.

SEC. 4, *Paragraph 1.* Each warehouse shall be kept open for the purpose of receiving grain for storage and delivering grain out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m. except as provided in paragraph 2 of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his licensed warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m. Business hours.

Par. 2. In case the warehouse is not to be kept open as required by paragraph 1 of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, and the telephone number, if any, who shall be authorized to deliver grain stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be. Closing of warehouses.

SEC. 5. Each warehouseman shall have and maintain a system of accounts, approved for the purpose by the bureau. This shall include a stock record showing for each lot of grain received for System of accounts.

609021 O - 44 - 3

storage its net weight including dockage, if any, its grade when its grade is required to be, or is, ascertained, its location, the dates received for and delivered out of storage, the receipts issued and canceled, also a separate record for each depositor of his grain, which shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled on request of each depositor. The warehouseman shall further keep a general insurance account showing the policy number, issuing company, amount, binding and expiration dates of all fire, tornado, and other insurance policies taken out by him and in each instance show the property covered by such policies. These records shall also show similar information concerning any nonstorage grain handled through the warehouse.

Record of nonstorage grain.

Reports if requested.

SEC. 6. *Paragraph 1.* Each warehouseman shall, from time to time, if requested by the bureau, make such reports, on forms prescribed and furnished for the purpose by the bureau, concerning the condition, contents, operation, and business of the warehouse.

Copies of reports to be kept.

Par. 2. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the bureau, an exact copy of each kind of report submitted.

Inspections and examinations of warehouse.

SEC. 7. Each warehouseman shall permit any officer or agent of the department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

Care of grain in licensed warehouse.

SEC. 8. Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

Care of other grain and other commodities.

SEC. 9. If, at any time, a warehouseman shall handle or store grain otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the grain in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the act and these regulations.

Excess storage.

SEC. 10. If at any time a warehouseman shall store grain in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the bureau of such excess storage, the reason therefor, and the location thereof.

Removal of grain specially binned or stored for insurance purposes.

SEC. 11. Except as may be required by law or these regulations, a warehouseman shall not remove any grain for storage from the licensed warehouse or a part thereof in which it may be specially binned or stored for insurance purposes, and transfer the grain to another bin without first obtaining the receipt, cancelling the same and issuing a new receipt for said grain following its transfer.

Grades and weights according to which bulk grain shall be accepted and delivered.

SEC. 12. Each warehouseman shall accept all grain for storage and shall deliver out of storage all bulk grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof under the act and these regulations; or if an appeal from the determination of an inspector has been taken, either under the grain standards act and regulations thereunder or under regulation 9 of these regulations, such grain shall be accepted for and delivered out of storage in accordance with the grades as finally determined in such appeal.

Storage of identity preserved grain.

SEC. 13. Upon the acceptance by a warehouseman for the storage in his warehouse, of any lot of grain the identity of which is to be preserved, he shall store, or cause to be stored, such grain in an individual bin or compartment identified by clearly distinguishable numbers or letters permanently and securely affixed thereto, or shall so mark the lot or the bags of such grain or so place them in the warehouse that the identity of the grain will not be lost during the storage period, and his records shall clearly show the location of such grain in the warehouse.

Sacked grain to be kept piled in orderly manner.

SEC. 14. Each warehouseman shall keep sacked grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting, and identification of each lot.

All warehouses to be kept clean.

SEC. 15. Each warehouseman shall keep his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain.

Delivery of fungible grain.

SEC. 16. Except as may be provided by law or these regulations, each warehouseman, (*a*) upon proper presentation of a receipt for any grain other than identity stored grain, and which grain has not at the request of the depositor or lawful holder of the receipt covering such grain or otherwise as permitted by law or these regulations, been dried or otherwise conditioned by such warehouseman, and upon payment of tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt grain of the grade and quantity named in such receipt; and (*b*) upon proper presentation of a receipt for any grain the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical grain so stored in his warehouse.

Delivery of identity preserved grain.

Cleaning of grain. Dockage set to cover shrinkage.

SEC. 17. Each warehouseman whose warehouse is equipped with machinery suitable for the purpose, shall clean all bulk grain received for storage in such warehouse, on which the inspector at the request of the depositor or lawful holder of the receipt covering such grain has set dockage for cleaning.

Grades must be kept separate in storage.

SEC. 18. A warehouseman may not mix lots of different grades of grain stored or received for storage except when the identity of the grain to be stored is to be preserved or when a depositor surrenders receipts covering two or more lots and requests the warehouseman to deliver the amount of grain represented by the canceled receipts in such a manner that they will become one lot. The balance, if any, of grain resulting from this operation, after weighing and inspecting, is to be stored with grain of like grade or its identity preserved.

Mixing on delivery.

Overage to be weighed and inspected before restoring.

Stocks must be kept in balance by grades with receipts.

SEC. 19. Warehouseman must keep stocks of grain in storage by grades in balance with the grades of grain represented by outstanding receipts, except when the grain has unavoidably improved or deteriorated through natural causes. In case the grades of stored grain should get out of balance with grades represented by outstanding receipts, the warehouseman shall effect proper adjustments.

Grain out of condition to be stored specially binned or first conditioned.

SEC. 20. *Paragraph 1.* If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the licensed warehouse, the warehouseman shall not receive such grain for storage or store such grain in his licensed warehouse, but, if the warehouse has separate bins or is equipped with proper conditioning apparatus, he may receive such grain for storage in such separate bins or he may condition it and then store it in such manner as will not lower the grade of other grain.

Grain to be kept in same condition as when stored.

Par. 2. In case the warehouseman or the department shall find that storage of grain in direct contact with any part of the structure of a warehouse results, or is likely to result, in damage to the grain, the warehouseman shall not store grain in such part

of the warehouse except in such manner and by the use of such material as will keep the grain in the same condition as when stored.

Grain going out of condition.

Notice to interested parties.

May be reconditioned.

SEC. 21. In case the warehouseman considers that any portion of the grain in his warehouse is out of condition, or becoming so, he shall direct the inspector to examine the grain in question. If the inspector finds such grain to be out of condition or becoming so and he is of the opinion that by reelevating, screening, blowing, cooling, or drying the grain can be brought back into condition or that further deterioration can be prevented, such warehouseman shall give immediate notice of the fact to the persons and in the manner specified in section 22 of this regulation. If, within 24 hours after the giving of such notice, the owners of such grain have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the inspector, shall, in his warehouse to the extent to which it is equipped with machinery suitable for the purpose, or may in another warehouse or elevator so equipped to the extent to which his warehouse is not equipped with suitable machinery, subject the grain to any or all of the above-mentioned processes.

Warehouseman shall give notice of grain out of condition.

SEC. 22. *Paragraph 1.* If the warehouseman with the approval of the inspector, shall determine that the further deterioration of any grain can not be prevented by reconditioning, or after treating it in accordance with section 21 of this regulation, it is still out of condition, the warehouseman shall give immediate notice of the fact, in accordance with paragraphs 2 and 3 of this section.

Contents of notice.

Par. 2. Such notice shall state (*a*) the warehouse in which the grain is stored, (*b*) the quantity, kind, and grade, if determined, of the grain at the time the notice is given, (*c*) the actual condition of the grain as nearly as can be ascertained, and the reason, if known, for such condition, (*d*) the oldest outstanding receipts covering the amount of grain out of condition, other than sacked or specially binned grain, upon which the grain will be delivered, giving the number and date of each such receipt and the quantity, the kind, and grade of the grain as stated in such receipts or (*e*) the outstanding receipts covering the grain out of condition the identity of which was to have been preserved, giving the number and date of each such receipt and the designation of the bin, container or location of such grain as stated in the receipt therefor, and (*f*) that such grain will be delivered upon the return and cancellation of the receipts therefor.

Persons to whom notice shall be sent.

Par. 3. A copy of such notice shall be delivered in person or shall be sent by mail (*a*) to the persons holding the oldest receipts covering the grain in question mentioned in subdivisions (*d*) and (*e*) of paragraph 2 of this section if known to the warehouseman, (*b*) to any other person, including the persons mentioned in paragraph 4 of this section, known by the warehouseman to be interested in the grain, (*c*) to the grain exchange, board of trade, or chamber of commerce, if any, in the city or town in or nearest to which the warehouse is located, and (*d*) to the chief of the bureau. If the holders of the receipts and the owners of the grain are known to the warehouseman and can not, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do in accordance with paragraph 4 of this section, also immediately notify such persons by telegraph or telephone at their expense.

Notice to be posted.

Public notice shall also be given by posting a copy of such notice in a conspicuous place in the main office of the warehouse where receipts are issued.

Record of persons interested in receipt or grain.

Par. 4. Any person, interested in any grain or the receipt covering such grain stored in a warehouse, may, in writing, notify the warehouseman conducting such warehouse, of the fact and nature of his interest, and such warehouseman shall keep a record of the fact. If such person requests, in writing, that he be notified regarding the condition of any such grain and agrees to pay the

cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

Par. 5. Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any grain after notification of its condition in accordance with this section. Warehouseman not relieved from properly caring for grain at all times.

SEC. 23. If the grain, advertised in accordance with the requirements of section 22 of this regulation, has not been removed from storage by the owner thereof within 10 days from the date of notice of its being out of condition, the warehouseman in whose warehouse such grain is stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in paragraph 3 of section 22 of this regulation. Grain may be sold at public auction after notice.

SEC. 24. Subject to the provisions of section 13 of the act, a licensed warehouseman may elect not to receive grain for storage the identity of which is to be preserved while in storage. Acceptance of identity preserved grain optional.

Regulation 6. Fees

SECTION 1. There shall be charged, assessed, and collected a fee of $10 for each original or amended warehouseman's license applied for by a warehouseman, and a fee of $3 for each license, or amendment thereto, issued to an inspector and/or weigher. License fees.

SEC. 2. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of $2 for each 10,000 bushels of the grain storage capacity, or fraction thereof, determined in accordance with regulation 3, section 2, paragraph 1, but in no case less than $10 nor more than $200, and, for each reexamination or reinspection, applied for by such warehouseman, a fee, based on the extent of the reexamination or reinspection, proportioned to, but not greater than, that prescribed for the original examination or inspection. Warehouse inspection fee.

SEC. 3. Before any warehouseman's license, or amendment thereto, or any inspector's and/or weigher's license, is granted, or original examination or inspection, or reexamination or reinspection applied for by a warehouseman, is made, pursuant to these regulations, the warehouseman and/or inspector or weigher shall deposit with the bureau the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the bureau, draft, or post office or express money order, payable to the order of "Treasurer of the United States." Advance deposit.

SEC. 4. The Treasurer of the United States shall hold in his custody each advance deposit made under this regulation until the fee, if any, is assessed and he is furnished by the bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing same. Return of excess deposit.

Regulation 7. Inspectors and Weighers

SECTION 1. *Paragraph 1.* Application for licenses to inspect and grade or to weigh grain under section 11 of the act shall be made to the chief of the bureau on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the warehouseman for whom the applicant will inspect, grade or weigh grain under the act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose. Inspector's and weigher's application.

Par. 2. Each inspector's application shall contain (a) evidence that he can correctly grade grain in accordance with the official standards of the United States, or in the absence of such stand- Contents of inspector's application.

ards in accordance with any standards approved by the chief of the bureau, (*b*) that he has passed his twenty-first birthday, (*c*) satisfactory evidence that he will be provided with such means or facilities for inspecting and grading grain as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

Inspectors licensed under Grain Standards Act.

Par. 3. In lieu of compliance with the requirements of paragraph 2 of this section, the license applied for may be granted whenever such applicant furnishes satisfactory evidence that he holds an effective license under the Grain Standards Act and regulations thereunder, to inspect and grade such grain and to certificate the grade thereof.

Contents of weigher's application.

Par. 4. Applications for licenses to weigh grain shall be on forms furnished for the purpose by the chief of the bureau and shall give such information as will show the applicant's experience in weighing grain.

Combined inspector's and weigher's application.

Par. 5. A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

Applicant must furnish additional information if requested.

Par. 6. An applicant shall at any time furnish such additional information as the department shall find to be necessary to the consideration of his application.

Examination of applicants and licensees.

SEC. 2. Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the department, submit to an examination or test to show his ability properly to inspect and grade or to weigh grain.

Posting of licenses.

SEC. 3. Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the bureau.

Duties of inspector and weigher.

SEC. 4. Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect and grade or weigh and certificate the grade or weight of grain, stored or to be stored in a warehouse, for which he holds a license, if such grain be offered to him under such conditions as permit proper inspection and weighing and the determination of the grade or weight thereof. No inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain.

Inspection certificates to be based on representative sample.

Inspection certificate.

SEC. 5. *Paragraph 1.* Except as provided in paragraph 2 of this section, each inspection certificate issued under the act by an inspector shall be in a form approved for the purpose by the department, and shall embody within its written or printed terms: (*a*) The caption "United States Warehouse Act, Grain Inspection Certificate," (*b*) whether it is an original, a duplicate, or other copy, and that it is not negotiable, (*c*) the name and location of the warehouse in which the grain is or is to be stored, (*d*) the date of the certificate, (*e*) the consecutive number of the certificate, (*f*) the approximate amount of grain covered by the certificate, (*g*) the kind of grain covered by the certificate, (*h*) the grade of the grain, as determined by such licensed inspector, in accordance with regulation 8, and, in the case of grain for which no official grain standards of the United States are in effect, the standard or description in accordance with which such grain is graded, (*i*) that the certificate is issued by an inspector licensed under the United States warehouse act and the regulations thereunder, (*j*) a statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and (*k*) the signature of the inspector who inspected and graded the grain. In addition, the inspection certificate may include any other matter not inconsistent with the act or these regulations, provided the approval of the bureau is first secured.

Inspection certificate under grain standards act valid for purposes of act.

Par. 2. In lieu of the inspection certificate provided for in the preceding paragraph, each inspector, who holds an unsuspended and unrevoked license under the grain standards act and regulations thereunder to inspect and grade any grain and to

certificate the grade thereof for shipment or delivery for shipment in interstate or foreign commerce, shall, unless otherwise requested as to any such grain by the owner or depositor thereof, issue a certificate of grade covering such grain in accordance with the grain standards act and regulations thereunder. Such grain shall be deemed to be inspected and graded and such certificate of grade shall be deemed to be an inspection certificate for the purposes of the act and these regulations.

Copies of inspection certificate to be made accessible to interested parties.

SEC. 6. Each inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the grain is involved at the place designated in section 3 of this regulation a true copy of the inspection certificate issued by him for such grain, or a record of each lot or parcel of grain inspected and graded by such licensed inspector showing the information contained on such inspection certificate.

Weight certificates.

SEC. 7. Each weight certificate issued under the act by a weigher shall be in a form approved for the purpose by the bureau, shall embody within its written or printed terms: (*a*) The caption "United States Warehouse Act, Grain Weight Certificate," (*b*) whether it is an original, a duplicate, or other copy, and that it is not negotiable, (*c*) the name and location of the warehouse in which the grain is or is to be stored, (*d*) the date of the certificate, (*e*) the net weight, including dockage, if any, of the grain, (*f*) that the certificate is issued by a weigher licensed under the United States warehouse act and the regulations thereunder, and (*g*) the signature of the weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or these regulations, subject to the approval of the bureau.

Combined inspection and weight certificate.

SEC. 8. The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of sections 5 and 7 of this regulation, if the form of such certificate shall have been approved for the purpose by the bureau.

Copies of certificates to be kept.

SEC. 9. Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued to him under these regulations, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

Inspectors and weighers to permit examination of records and to assist department representative in making examinations.

SEC. 10. Each inspector and each weigher shall permit any authorized officer or agent of the department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and these regulations, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in section 7 of regulation 5 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the act and these regulations.

Reports.

SEC. 11. Each inspector and each weigher shall, from time to time, if requested by the bureau, make reports, on forms approved for the purpose by the bureau, bearing upon his activities as such inspector or weigher.

Suspensions or revocations of inspector's or weigher's licenses.

SEC. 12. Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or

a weigher when such licensee, (*a*) has ceased to perform services as such inspector or weigher, or (*b*) has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under (*a*) or (*b*) exists, it shall be the duty of such warehouseman to notify the bureau in writing. Before the license of any inspector or weigher is suspended or revoked pursuant to section 12 of the act, such inspector or weigher shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4.

Return of suspended or revoked inspector's and weigher's licenses.

SEC. 13. *Paragraph 1.* In case a license issued to an inspector or a weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in section 3 of this regulation.

Inspector's and weigher's licenses automatically terminate with warehouse license.

Par 2. Any license issued, under the act and these regulations, to an inspector or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or suspended. Thereupon the license of such inspector or weigher shall be returned to the department. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been so revoked or suspended. Such new license shall be posted as prescribed in section 3 of this regulation.

Lost or destroyed inspector's and weigher's licenses.

SEC. 14. Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary, or his designated representative.

Unlicensed inspectors and weighers must not represent themselves as licensed.

SEC. 15. No person shall in any way represent himself to be an inspector or weigher licensed under the act unless he holds an unsuspended and unrevoked license issued under the act.

Regulation 8. Grain Grading

Grades to be stated according to this regulation.

SECTION 1. Whenever the grade of grain is required to be or is stated for the purpose of the act or these regulations, it shall be stated in accordance with this regulation.

Official grain standards of the United States adopted.

SEC. 2. The official grain standards of the United States are hereby adopted as the official grain standards for the purposes of the act and these regulations.

Standards of grades for other grain.

SEC. 3. Until grades for any kind of grain are officially promulgated by the Secretary, the grade of grain, for which no official grain standards of the United States are in effect, shall be stated (*a*) in accordance with the State standards, if any, established in the State in which the warehouse is located, (*b*) in the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the grain trade generally in the locality in which the warehouse is located, subject to the approval of the bureau, or (*c*) in the absence of the standards mentioned in subdivisions (*a*) and (*b*) of this section, in accordance with any standards approved for the purpose by the bureau.

Grades to be based on representative sample and proper inspection.

SEC. 4. Whenever the grade of grain is required to be or is stated for the purposes of the act or these regulations, it shall be based upon a correct and representative sample of the grain and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade.

Regulation 9. Grain Appeals

Who may appeal.

SECTION 1. In case a question arises as to the true grade of grain, stored or to be stored in a warehouse, for which official grain standards of the United States are in effect and for which a grain inspection certificate has been issued in accordance with regulation 7, section 4, any interested party may take an appeal for the determination of the true grade of such grain.

Complaint.

SEC. 2. In order to take such an appeal a complaint in writing in accordance with section 3 of this regulation shall be filed, in the office of Federal Grain Supervision in the district in which the inspection appealed from was made, not later than the close of business on the second business day following the date the grading was performed as shown by the record required by regulation 7, section 6.

Contents of complaint.

SEC. 3. Such complaint shall be in English and shall state (*a*) the name and post office address of the complainant, (*b*) the names and post office addresses of all other parties interested in the grain involved, or if no other parties are named, why not, (*c*) the name and location of the licensed warehouse in which the grain is or is to be stored, (*d*) the identification and the location of the grain at the time of taking the appeal, (*e*) if samples have been agreed upon and are submitted in accordance with paragraph 2 of section 7 of this regulation, a statement thereof, and (*f*) such other information as may be required by the office of Federal Grain Supervision in which such complaint is filed or by the chief of the bureau. Such complaint shall be signed by the complainant and may be signed by any one or more or all of the parties interested in such appeal. An appeal taken in conformity with the grain standards act and regulations thereunder shall be deemed to be an appeal for the purposes of this regulation.

Proof of agent's authority.

SEC. 4. In case a complaint is filed under this regulation by a person purporting to act in behalf of another person, the grain supervisor in charge of the office of Federal Grain Supervision in which such complaint is filed, or the chief of the bureau, may, if he considers necessary, require proof of the authority of such person to file the complaint.

Certificate of inspection and receipt to be surrendered.

SEC. 5. The complainant shall file or cause to be filed in the office of Federal Grain Supervision mentioned in section 2 of this regulation, with the complaint or before the issuance of the grade memorandum in the appeal, the inspection certificate for the grain involved issued by the inspector from whose inspection the appeal is taken together with the receipt, if any, covering such grain. If such inspection certificate be in the custody or control of the inspector he shall upon request immediately transmit or deliver it to said office.

Extension of time for filing complaint.

SEC. 6. Upon a showing of the discovery of fraud or other good cause for an extension of time the grain supervisor in charge of the office mentioned in section 2 of this regulation may permit the filing of a complaint or sample after the time prescribed therefor in these regulations, and a statement of such appeal by the official making the same.

Basis for determining appeal.

SEC. 7. *Paragraph 1.* No appeal taken under this regulation shall be determined except upon the basis of a representative sample or samples of the grain involved.

Agreed samples may be submitted.

Par. 2. The complainant may submit representative samples of the grain involved which have been agreed upon by the warehouseman in whose warehouse the grain is or is to be stored and the interested parties, other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties.

Samples to be drawn by authorized person.

Par. 3. If samples which have been submitted pursuant to paragraph 2 of this section be deemed unsatisfactory, or if such samples be not submitted, a representative sample or samples of the grain involved shall be drawn by a person authorized for the

purpose by the bureau or the grain supervisor in charge of the office of Federal Grain Supervision in which the appeal is heard; and the complainant or the warehouseman shall have the grain made accessible and placed under such conditions as to permit the taking of a representative sample.

Transmittal of sample.

SEC. 8. Samples of grain involved in an appeal shall be delivered in person or transmitted by express or parcel post to the office of Federal Grain Supervision in which the appeal is filed.

What constitutes representative samples.

SEC. 9. For the purposes of an appeal under this regulation no sample shall be deemed to be representative unless it comply with the following requirements:

Size of sample.

Paragraph 1. It shall be at least 2 quarts in size, of which at least 1½ pints shall be inclosed in a clean, airtight container and the remainder, if any, in a clean cloth sack.

How to obtain sample.

Par. 2. Samples shall be taken from as many different portions of the lot or parcel, in accordance with the instructions of the bureau or the grain supervisor in charge of the office mentioned in section 2 of this regulation, as will show an average of the lot or parcel.

Sample portions to be mixed.

Par. 3. The grain taken from the different portions of a lot or parcel shall be thoroughly mixed, and such mixtures, or a typical portion thereof, otherwise complying with this regulation, shall constitute a sample of the entire lot or parcel.

Statement on damaged grain in sample.

Par. 4. In case any portion of a lot or parcel of grain is sour, musty, excessively wet, heating, hot, fire burnt, infested with live weevil or other insects injurious to stored grain, or otherwise of distinctly low quality, separate samples otherwise complying with this regulation shall be taken, respectively, from such portion and from the remaining portion. There shall be filed with such samples a statement showing the estimated quantity of each portion of the grain from which each such sample was taken.

Penalty for concealing inferior grain.

Par. 5. In case it shall appear that a lot or parcel of grain has been so loaded or handled as intentionally to conceal evidently inferior grain, a sample of such inferior grain, otherwise complying with this regulation, shall constitute a sample of the entire lot or parcel.

When appeal may be dismissed.

SEC. 10. The grain supervisor in charge of an office of Federal Grain Supervision in which an appeal is filed may dismiss such appeal without its determination; (*a*) upon request of the complainant, (*b*) if it be found that the appeal was not taken in good faith, (*c*) for noncompliance with these regulations, or (*d*) because sufficient evidence is not available upon which to determine the true grade of the grain.

Samples to be examined and grade certificate issued.

SEC. 11. The sample or samples of the grain involved in an appeal complying with this regulation shall be examined as soon as possible, such tests shall be applied as are necessary, and except as provided in Section 10 of this regulation a grade certificate shall be issued by the grain supervisor hearing the appeal, showing the grade assigned by him to such grain. Such grade certificate shall supersede the inspection certificate for the grain involved. Immediately upon the issuance of a grade certificate under this section the original thereof, together with any receipt covering such grain filed in the appeal, shall be sent to the licensed warehouseman concerned and a copy shall be sent to the licensed inspector and to each other person shown by the record of the appeal to be interested therein.

Persons to whom copies of grade certificate shall be sent.

Fees

SEC. 12. *Paragraph 1.* The minimum fee in an appeal shall be $1 if it involve the grade of grain in a wagon or in a lot of 25 sacks or less. In any other appeal the minimum fee shall be $1.50.

When the total fee in any appeal at the rates specified below in this paragraph would amount to more than the minimum, the fee in the appeal shall be fixed as follows:

For bulk or sacked grain in carload lots, $1.50 per car;

For bulk or sacked grain in wagon lots, $1 per wagon;

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C.

Amendment No. 1 to Service and Regulatory Announcements No. 127 (A.M.S.)

Amendment to the Regulations for Warehousemen Storing Grain under the United States Warehouse Act

Pursuant to the authority vested in the Secretary of Agriculture by the United States Warehouse Act, approved August 11, 1916 (39 Stat. 490; 7 U.S.C. 268), the Regulations of the Secretary of Agriculture for Warehousemen Storing Grain, S. R. A.-B. A. E. 127, approved May 9, 1931 (Part 102 of Title 7 of the Code of Federal Regulations), are hereby amended (1) by striking out the words "Bureau of Agricultural Economics" wherever they appear in said regulations and inserting in lieu thereof the words "Agricultural Marketing Service"; and (2) by striking out the word "Bureau" wherever it appears in said regulations and inserting in lieu thereof the word "Service".

These regulations shall continue in effect and be administered by the Agricultural Marketing Service.

Done at Washington, D. C., this 6th day of July, 1939. Witness my hand and the seal of the Department of Agriculture.

Secretary of Agriculture

Amend. No. 2 to S. R. A. 127 (B.A.E.)-A.M.S.

WAR FOOD ADMINISTRATION
Office of Marketing Services
Washington 25, D. C.

Amendment No. 2 to Service and Regulatory Announcements No. 127
Amendment to the Regulations for Warehousemen Storing Grain
Under the United States Warehouse Act.

The following regulations of the Regulations for Warehousemen Storing Grain were amended on November 15, 1939, to read as follows:

Regulation 11, Section 3 (Section 102.105) "The chief of the Service may approve as registrar of warehouse receipts issued for grain in licensed elevators operating in any terminal market or in any futures contract market the official designated by the State in which such market is located, if such an official position has been created by law, or any other individual, provided such individual is not an employee of, or the owner of, any such licensed elevator, or the owner of, or an employee of the owner of, grain deposited in any such licensed elevator."

Regulation 11, Section 9 (Section 102.111) "Sections 102.103-102.111 (Reg. 11) apply only to warehousemen operating in such markets as may have been heretofore or may be hereafter designated as futures contract markets, and Sections 102.103-102.107 (Reg. 11, Secs. 1-5) apply also to warehousemen operating in such markets as the Department may view as terminal markets, and the appointment heretofore or hereafter of a Registrar of warehouse receipts, as provided in Section 102.105 (Reg. 11, Sec. 3) is conclusive that the Department views such market as a terminal market for purposes of the Warehouse Act. All other regulations issued under the Act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except as such regulations may conflict with this regulation."

Amend. No. 3 to S.R.A. 127 (B.A.E.)-A.M.S.

UNITED STATES DEPARTMENT OF AGRICULTURE
Production and Marketing Administration
WASHINGTON 25, D. C.

Amendment No. 3 to Service and Regulatory Announcements No. 127

Amendment to the Regulations for Warehousemen Storing Grain Under the United States Warehouse Act

The following regulations of the Regulations for Warehousemen Storing Grain were amended in July 1941, to read as follows:

Reg. 5 Sec. 13 Storage of identity-preserved grain. Upon acceptance for storage of bulk grain the identity of which is to be preserved, the warehouseman shall store such grain in a bin or bins, a compartment or compartments, or other container or containers identified by clearly distinguishable identification insignia permanently and securely affixed thereto, subject to such control by the Department as may seem administratively necessary to protect depositors or holders of receipts. If the grain is received in bags or other suitable containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the grain will not be lost while in storage. The warehouseman's records shall at all times clearly show the location of all identity-preserved grain stored in the warehouse.

Reg. 7 Sec. 9 Copies of certificates to be kept. Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued by him under these regulations, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

For bulk or sacked grain in other than in carload or wagon lots, 50 cents per 1,000 bushels or fraction thereof, except as provided in the first sentence of this section.

Par. 2. Such further charges may be made for telegraph and telephone toll charges, express, parcel post, registry fees, and for other items paid or incurred by the department on account of a dispute or an appeal, and for drawing and submitting samples required by this regulation, including such traveling expenses, if any, incurred in accordance with the fiscal regulations of the department as the chief of the bureau may deem proper. Further charges.

Par. 3. The fees and expenses fixed in accordance with this section shall be assessed against the complainant. Fees and expenses assessed against complainant.

SEC. 13. *Paragraph 1.* If required by the grain supervisor in charge of the office of Federal Grain Supervision in which the complaint is filed or by the chief of the bureau, the complainant shall make an advance deposit to cover the expenses payable by him under section 12 of this regulation. Such deposit shall be in an amount fixed by such grain supervisor or the chief of the bureau and shall be in the form of a check, certified if required by the chief of the bureau, or a post office or express money order payable to the order of "Treasurer of the United States." Additional sums may be required by the official hearing the appeal when deemed necessary by him as advance deposits. In case an appeal be sustained, the amount of the fee assessed shall be refunded. As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made, the chief of the bureau shall furnish the Treasurer of the United States with a statement of all fees and expenses chargeable against such advance deposits. Thereupon the Treasurer of the United States shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses. Advance deposits. Fee refunded if appeal sustained.

Par. 2. All fees not covered by advance deposits shall be payable immediately upon service of the original or a copy of the grade certificate of the grain supervisor and shall be paid by check, certified if required by the chief of the bureau, or post office or express money order, drawn to the order of "Treasurer of the United States," or in cash to the Treasurer of the United States. Fees, how paid.

Par. 3. In case an appeal is not sustained, all sums assessed as fees and expenses against such advance deposits and all sums collected and received by the Treasurer of the United States in payment of such fees and expenses shall be deposited and covered into the Treasury of the United States as miscellaneous receipts. Fees and expenses for appeals not sustained.

SEC. 14. Samples of grain submitted in appeals under this regulation, or such portions thereof as have not been used in determining the grade and the containers of such samples may, after the expiration of one month be used for the purposes of the department or disposed of in accordance with the property regulations of the department and the proceeds, if any, covered into the Treasury of the United States as miscellaneous receipts, or may, at any time in the discretion of the chief of the bureau be returned to the party by whom they were filed or his agent at his expense. Disposition of samples.

SEC. 15. No rule, regulation, by-law, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization, nor any contract, agreement, or understanding, shall be ground for refusing to hear and determine any appeal taken under this regulation. No ground for refusing an appeal.

SEC. 16. No person, licensed under the act, shall, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal under this regulation. No person shall prevent any party from taking an appeal.

Regulation 10. Miscellaneous

Regulations applicable to State warehouses.

SECTION 1. Every person applying for a license, or licensed under section 9 of the act, shall, as such, be subject to all portions of these regulations, except regulation 2, section 4, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of grain and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with regulation 3, sections 1 and 2, file with the Secretary, or his designated representative, a single bond meeting the requirements of the act and these regulations, in such form, and in such amount not less than $5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of grain and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

Publications.

SEC. 2. Publications under the act and these regulations shall be made in such media as may be deemed proper by the chief of the bureau.

Information of violation of act and regulations.

SEC. 3. Every person licensed under the act shall immediately furnish the department any information which comes to the knowledge of such person tending to show that any provision of the act or these regulations has been violated.

Procedure in hearings.

SEC. 4. For the purpose of a hearing under the act or these regulations, except regulation 9, the licensee involved shall be allowed a reasonable time, fixed by the Secretary, or his designated representative, within which affidavits and other proper evidence may be submitted. If requested by the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by, the Secretary, or his designated representative. The testimony of the witnesses at such oral hearings shall be upon oath or affirmation administered by the official before whom the hearing is held, when required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary, or his designated representative. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the department. The records, and when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.

One document and one license to cover several products.

SEC. 5. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such

warehouse, shall be sufficient unless otherwise directed by the chief of the bureau.

Amount of assets and bond needed for combination warehouses.

SEC. 6. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the chief of the bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

Amendments.

SEC. 7. Any amendment to these regulations, unless otherwise stated herein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

Regulation 11

(Applicable only to warehousemen in terminal and futures contract markets)

Futures market defined.

SECTION 1. For the purpose of this regulation a futures contract market is any grain market designated as a futures contract market under authority of the Commodity Exchange Act.

Weighers' licenses may be issued to market weighmaster and deputies.

SEC. 2. Licenses to weigh grain into, out of, and within licensed warehouses, receipts of which are deliverable in satisfaction of futures contracts, may be issued to the weighmaster and his deputies of such contract market.

State registrar may be approved as Federal registrar.

SEC. 3. The chief of the bureau may approve as registrar of warehouse receipts issued for grain in licensed elevators operating in a futures contract market the official designated by the State in which such contract market is located, if such an official position has been created by law, or any other individual provided such individual is not an employee of, or the owner of, any such licensed elevator.

Grain inspectors' licenses may be issued to State inspectors.

SEC. 4. Licenses may be issued to employees of the grain inspection department of any State or any other agency to inspect and to certificate the grade of grain moving into, out of, or within, the licensed elevators.

Chief sampler of market may be licensed.

SEC. 5. Licenses may be issued to a chief sampler or his deputies in any market to sample and to inspect grain stored or to be stored in any licensed warehouse in a specified market for the purpose of determining the storability of the grain, subject to the act and the regulations thereunder. Should a difference of opinion exist between any licensed warehouseman, the licensed sampler or any party having an interest in the grain, an appeal may be filed within 24 hours with the chief of the bureau who shall appoint three disinterested persons to serve as an appeals committee and the findings of this committee shall be final and binding on all parties.

Condition of grain may be appealed.

Additional bond required of terminal warehousemen.

SEC. 6. In addition to the financial responsibility and the bonding requirements of Regulations 2 and 3, such additional bond shall be required for the protection of the public as will make the bonded responsibility of each licensed warehouseman equal to the maximum amount of bond required for nonlicensed warehousemen by the exchange, board of trade, or other agency within said market in which the licensed warehouseman is operating.

Exchange Committee may accompany Federal examiners in inspecting warehouses.

SEC. 7. Annually or more frequently if desired, a duly authorized committee of any exchange or board of trade that has been designated as a contract market may enter any warehouse operating under these regulations, when accompanied by United States warehouse examiners, to observe the official examination of the warehouse; or such committee may participate in the making of such examination, under the supervision and direction of the United States warehouse examiner in charge. The committee shall be afforded full knowledge of the quantities, kinds, grades, and condition of all grain in the warehouse. The committee may also with the warehouse examiners have access to the warehouseman's records of receipts, fire insurance, weights, and grades. In lieu of an

examination by any committee of the exchange or board of trade the Department of Agriculture will furnish, if desired; to the secretary of the exchange or board of trade a summarized statement of its findings of conditions at each licensed warehouse operating within the market.

All warehouse receipts shall be registered in contract market.

SEC. 8. When a contract market designates any agency for the registration of public warehouse receipts and such agency is approved as provided for in Section 3 of this regulation, all warehouse receipts shall be registered with the registrar and any change in ownership of a warehouse receipt shall be reported to the registrar by the owner thereof, giving his name and address to the registrar. All registered receipts shall be entitled to the following protection:

Precautions to protect receipts covering grain going out of condition.

(a) Whenever any licensed warehouseman considers that any grain stored in his warehouse is out of condition, or becoming so, and should be loaded out in order to protect the interests of the parties concerned, such warehouseman shall notify the registrar and the chief of bureau, giving the location, approximate quantity, grades, and condition of such grain, and the specific reason which makes loading out necessary. The registrar shall immediately notify the chief sampler, if there be one, otherwise the chief inspector, of the contract market who shall at once proceed to the warehouse in which the grain is stored and examine it, in conjunction with the licensed warehouseman. If the chief sampler, or chief inspector, agrees with the warehouseman that the grain should be loaded out, he shall so notify the registrar and the chief of the bureau. If the chief sampler does not agree with the warehouseman, the latter shall have the right to appeal to the chief of bureau who shall appoint an appeals committee as provided in Section 5. If, on such appeal, the warehouseman is sustained, the registrar shall be notified and such warehouse receipts as are selected as herein provided shall no longer be regular for delivery in satisfaction of futures contracts made under the rules and regulations of such contract market.

If grain must be loaded, oldest receipts to be selected first for surrender.

The registrar shall thereupon select the oldest registered warehouse receipt for grain of the grade involved and such additional next oldest registered warehouse receipts in the order of their issuance as may be necessary to equal the total quantity of the grain involved, unless such grain has been stored "identity preserved," and shall notify such holder or holders or their agents and the president of the contract market of the condition of the grain and the necessity for its being loaded out. When this information reaches the president of the contract market he shall appoint a committee consisting of five disinterested handlers of cash grain and notify the chief of bureau of the appointment of said committee giving the name, address, and business of each member. Each member of said committee shall be subject to disapproval by the chief of bureau. If no exception is taken to the committee membership during the same business day by the chief of bureau, the committee shall meet at once, and after taking into consideration various factors that establish the value of the grade of grain called for by the receipts held by such owner or owners, shall determine the fair value of the grain on the basis of the market quotations for grain of the grade called for by the receipts on the day of the finding of the appeals committee that the grain should be loaded out, which price shall be paid to the owner or holder of each such receipt by the licensed warehouseman. If the price offered is not satisfactory to any such owner or holder, a committee appointed by the president of such contract market at the request of such owner or holder shall procure other offers for such grain and such offers shall be immediately reported to such owner or holder or to his agent. If the owner refuses to accept any such offers he shall have the 2 following business days to order and furnish facilities for loading such grain out of store and during this period the warehouseman shall be obliged to deliver the grain covered by the warehouse receipts, but not more than 3 days shall elapse after notification by

Appointment and approval of committee to establish value of grain.

the registrar to the holder of the receipts before satisfactory disposition shall have been made of the grain either by sale or by ordering out and furnishing facilities to load same, provided the amount of such grain does not exceed 100,000 bushels in any one elevator. If the amount of grain in question exceeds 100,000 bushels, the owner or owners of the warehouse receipts shall be allowed 48 hours of grace over and above the aforementioned 3 days for each 100,000 bushels or fraction thereof in excess of the first 100,000 bushels.

(b) In the event that the holder of the warehouse receipt or his agent fails to remove the grain or make other satisfactory disposition of same within the prescribed time it shall be held for his account and any loss in grade sustained shall likewise be for his account.

(c) Nothing in the foregoing provisions shall be construed as prohibiting the warehouseman from fulfilling contracts from other stocks under his control, subject to the United States warehouse act and regulations thereunder.

Applicability of this regulation.

SEC. 9. This regulation applies only to warehousemen operating in such markets as the Department of Agriculture may view as terminal markets or in such markets as may be designated as futures contract markets. All other regulations issued under the act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except as such regulations may conflict with this regulation.

UNITED STATES WAREHOUSE ACT

[39 United States Statutes at Large, page 486, as amended July 25, 1919, February 23, 1923, and March 2, 1931.]

That this Act shall be known by the short title of "United States warehouse Act."

SEC. 2. That the term "warehouse" as used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agricultural products; and "receipt" means a warehouse receipt.

SEC. 3. That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein.

SEC. 4. That the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: *Provided*, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 5. That each license issued under Sections 4 and 9 of this Act shall terminate as therein provided, or in accordance with the terms of this Act and the regulations thereunder, and may from time to time be modified or extended by a written instrument.

SEC. 6. That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States to secure the faithful performance of his obligations as a warehouseman under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, and may, in the discretion of the Secretary of Agriculture, include the requirements of fire and/or other insurance. Whenever the Secretary of Agri-

culture, or his designated representative, shall determine that a previously approved bond is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

SEC. 7. That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Sections 6 or 9, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

SEC. 8. That upon the filing with and approval by the Secretary of Agriculture, or his designated representative, of a bond, in compliance with this Act, for the conduct of a warehouse, such warehouse may be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded shall be used until a bond, such as provided for in Section 6, has been filed with and approved by the Secretary of Agriculture, or his designated representative, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked.

SEC. 9. That the Secretary of Agriculture, or his designated representative, may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products, and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act, and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act, and such rules and regulations, to the same extent as is provided for warehousemen licensed hereunder.

SEC. 10. That the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and for each license issued to a warehouseman or to any person to classify, inspect, grade, sample, and/or weigh agricultural products stored or to be stored under the provisions of this Act, the Secretary of Agriculture, or his designated representative, may charge, assess, and cause to be collected a reasonable fee. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts.

SEC. 11. That the Secretary of Agriculture, or his designated representative, may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample, or classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to condition, grade, or otherwise and to certificate the condition, grade, or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample, or classify and weigh the same and to certificate the condition, grade, or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him.

SEC. 12. That any license issued to any person to inspect, sample, or classify, or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture, or his designated representative, whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify, or to weigh any agricultural product or products correctly, or has violated any of the provisions of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatever. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may

be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

SEC. 14. That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder.

SEC. 15. That any fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act.

SEC. 16. That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades.

SEC. 17. That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

SEC. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided*, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further*, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided*, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this Act as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided*, That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: *Provided, however*, The Secretary of Agriculture may in his

discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

SEC. 19. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined: *Provided*, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate.

SEC. 20. That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: *Provided*, That if there be in such case no statute of the United States or law of a State applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act.

SEC. 21. That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipts; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman.

SEC. 22. That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued.

SEC. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder.

SEC. 24. That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the Secretary may publish his findings.

SEC. 25. That the Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, or his designated representative, whenever he deems necessary, may suspend a license temporarily without hearing.

SEC. 26. That the Secretary of Agriculture from time to time may publish the results of any investigations made under Section 3 of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor.

SEC. 27. That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto.

SEC. 28. That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act.

SEC. 29. That in the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This Act shall not be construed so as to limit the operation of any statute of the United States relating to warehouses or to warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

SEC. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this Act, or who shall violate or fail to comply with any provision of Section [illegible] of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade, or weigh fraudulently, any agricultural product stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court.

SEC. 31. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the money appropriated by this Act to pay the salaries and expenses thereof.

SEC. 32. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SEC. 33. That the right to amend, alter, or repeal this Act is hereby expressly reserved.

U. S. GOVERNMENT PRINTING OFFICE: 1944 O - [illegible]

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 470.

ILLINOIS COMMERCE COMMISSION, ET AL., *Petitioners*,

v.

GREAT LAKES ELEVATOR CORPORATION, ET AL., *Respondents*.

BRIEF FILED ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AS AMICUS CURIAE, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

FREDERICK G. HAMLEY,
JOHN E. BENTON,
Attorneys for National Association of Railroad and Utilities Commissioners.
7413 New Post Office Building,
I. C. C. Section,
Washington 25, D. C.

September 20, 1946.

PRESS OF BYRON S. ADAMS WASHINGTON, D. C.

INDEX.

	Page
OPINION BELOW	1
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
THE QUESTION PRESENTED	6
SUMMARY OF ARGUMENT	6
ARGUMENT	11
I. In The Absence Of A Conclusive Showing Of Congressional Intent, Federal Legislation Should Not Be Held To Supersede The Historic Function Of The States In Regulating Public Warehouses	11
II. There Is No Irreconcilable Conflict Between The Provisions Of The Illinois Constitution And Statutes Regulating Warehouses And Those Of The United States Warehouse Act	13
The Commission proceeding should not have been enjoined if any one of the Illinois Constitutional or statutory provisions invoked by Rice is found to be non-conflicting with the federal act	13
The rate regulatory provisions of the Illinois statute, invoked by the Rice complaint, do not conflict with those of the United States Warehouse Act	17
The rate features of the federal act are extremely limited	17
No actual or threatened rate conflict is involved here	21
Under the *Shreveport* doctrine, no requirement under the Warehouse Act can conflict with normal state regulation	24

Page

Under principles of supersedure, the remote possibility of future conflict in a particular case will not justify blanket nullification of general state rate regulation 28

The provisions of the Illinois statutes relating to discriminatory and preferential practices, do not conflict with the provisions of the United States Warehouse Act 32

The provision of the Illinois Constitution prohibiting public grain warehousemen from dealing in grain does not conflict with the provisions of the United States Warehouse Act 36

The provisions of the Illinois statute respecting contracts between affiliates or with other public utilities, and respecting issuance of securities, do not conflict with any provision of the United States Warehouse Act 40

Summary on the question of conflict between federal and state statutes 44

III The Illinois Statutes Regulating Warehouses Do Not Infringe The Policy Of The United States Warehouse Act 45

The federal act, as originally enacted, was not intended to supersede all state regulation 47

The 1931 amendment did not change the basic intention of Congress but was only meant to strengthen federal administration in the limited field covered by the original act 54

Summary on the general scope and policy of the federal act 64

IV. *Supreme Court Cases, Holding That Supersedure Has Occurred, Distinguished* 67

CONCLUSION 74

AUTHORITIES.

Table of Cases Page

Allen-Bradley Local v. Wisconsin E. Rel. Bd., 315 U. S. 740 ..... 6, 7, 12, 16, 31, 43, 65, 66, 71
A. T. & S. F. R. Co. v. R. Com., 283 U. S. 380 70
Board of Railroad Com. v. The Great Northern Ry. Co., 218 U. S. 412 27
Charleston and Western Car Railway Co. v. Varnville Co., 237 U. S. 597 ..... 68, 70
Cleveland v. Hope Natural Gas Co., 44 P. U. R. (N.S.) 1 22
Cloverleaf Butter Co. v. Patterson, 315 U. S. 148 ... 9, 10, 41 69, 71, 72
Davies Warehouse Co. v. Bowles, 321 U. S. 144 ... 10, 30 44, 66
Dickson v. Uhlmann Grain Co., 288 U. S. 188 ..... 9, 38
Federal Compress & Warehouse Co. v. McLean, 291 U. S. 17 65
Gulf, Colorado and Santa Fe Ry. Co. v. Hefley, 158 U. S. 98 ..... 8, 29, 30
Hannah v. People, 198 Ill. 77 36
Hill v. Florida, 325 U. S. 538 ..... 73, 74
Hines v. Davidowitz, 312 U. S. 52 ..... 70, 71
Illinois Cent. R. R. Co. v. Pub. Utilities Com. of Illinois, 245 U. S. 493 12
Increases in Utah Freight Rates and Charges, 255 I. C. C. 97 28
In Re Farmers Cooperative, 8 N. W. 2d 557 60
Interstate Commerce Commission v. Cincinnati etc. R. Co., 167 U. S. 479 ..... 7, 22
Kelly v. Washington, 302 U. S. 1 ..... 9, 12, 45, 46
Minnesota Rate Cases, Simpson v. Shepard, 230 U. S. 352 ..... 26, 30
Mintz v. Baldwin, 289 U. S. 346 46
Munn v. Illinois, 94 U. S. 113 ..... 4, 6, 11, 30
Napier v. Atlantic Coast Line R. R. Co., 272 U. S. 605 67, 68
New York Central R. R. Co. v. Winfield, 244 U. S. 147 ..... 68, 69, 70
Penn Dairies v. Milk Control Com., 318 U. S. 261 11, 42, 72, 73
Prigg v. Commonwealth of Pennsylvania, 41 U. S. (16 Pet.) 539 67
Reid v. Colorado, 187 U. S. 137 ..... 7, 12, 46

Page

Savage v. Jones, 225 U. S. 501 46
Shreveport Case, Houston E. & W. Texas Ry. Co. v. United States, 23 I. C. C. Rep. 31, 234 U. S. 342 ..... 8, 25, 26
Sinnot v. Davenport, 22 How. (U. S.) 227 ..... 13, 21
Southern Pacific Co. v. Arizona, 325 U. S. 761 ..... 7, 12, 45, 70
Southern Ry. Co. v. R. R. Commission of Indiana, 236 U. S. 439 ..... 67, 68
Terminal R. Assoc. v. Brotherhood of R. Trainmen, 318 U. S. 1 ..... 9, 31, 43, 70
Townsend v. Yeomans, 301 U. S. 441 ..... 57, 65
Union Brokerage Company v. Jensen, 322 U. S. 202 ..... 10, 57
United States v. Hastings, 296 U. S. 188 ..... 8, 10, 35, 43 61, 62, 63, 65
Wabash etc. Ry. v. Illinois, 118 U. S. 557 ..... 29, 30
Watson v. Buck, 313 U. S. 387 ..... 7, 15, 29
W. W. Cargill Co. v. Minn. ex rel. Railroad and W. Com., 180 U .S. 452 ..... 8, 16, 28

Miscellaneous

Constitution of the United States, Art. I, Sec. 8, Par. 3 3
Constitution of the United States, Art. IV, Sec. 2 67
Illinois Constitution 11, 36
Commodity Exchange Act, 7 U. S. C. 1, et seq. 3
United States Warehouse Act

Section 1 49
Section 2 ..... 48, 49
Section 3 48
Section 4 48
Section 5 48
Section 6 ..... 10, 54, 63
Section 8 48
Section 9 48
Section 10 49
Section 11 48
Section 12 48
Section 13 ..... 19, 33, 48
Section 14 49
Section 15 ..... 34, 49
Section 16 ..... 34, 48, 49
Section 17 ..... 48, 49

Page

Section 18 ..... 8, 17, 18, 37, 48, 51, 64
Section 19 49
Section 20 ..... 48, 49, 51, 64
Section 21 ..... 35, 48, 49
Section 22 ..... 48, 49
Section 23 ..... 19, 48, 49
Section 24 ..... 48, 51
Section 25 ..... 17, 18, 19, 35, 48, 51
Section 26 49
Section 27 49
Section 28 18
Section 29 ..... 10, 43, 47, 49, 51, 54, 55, 56, 57, 60, 61, 63
Section 30 ..... 34, 35, 48, 49, 61
Section 31 49
Section 32 49
Section 33 49
Regulation 2, Sec. 7 18
Regulation 4, Sec. 1(c) 37
Regulation 5, Sec. 3 ..... 18, 22
Regulation 5, Sec. 12 34
Regulation 5, Sec. 16 34
Regulation 5, Sec. 18 34

Illinois Grain Warehouse Act 3, 17
Illinois Public Utility Act

Section 21 50
Section 22 50
Section 23 50
Section 27 50
Section 27a 50
Section 30 50
Section 32 ..... 17, 50
Section 36 ..... 20, 50
Section 37 ..... 20, 50
Section 38 ..... 17, 20, 50
Section 39 ..... 20, 50
Section 41 ..... 17, 20, 50
Section 50 51
Section 56 51
Section 64 51
Section 66 51
Section 68 51
Section 69 51
Section 76 ..... 20, 50

Page

Congressional Record, Vol. 53, Pt. 6..... 54
Congressional Record, Vol. 72, Pt. 8..... 60

House Report 4, 71st Cong., 1st Sess..... 58
House Report 60, 64th Cong., 1st Sess..... 53
Senate Report 1775, 71st Cong., 3rd Sess.....59, 64
Public Warehousing, John H. Frederick, 1940.....64, 65

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 470.

ILLINOIS COMMERCE COMMISSION, ET AL., *Petitioners*,

v.

GREAT LAKES ELEVATOR CORPORATION, ET AL., *Respondents*.

BRIEF FILED ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AS AMICUS CURIAE, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 156 Fed. 2d, page 33.

PRELIMINARY STATEMENT.

The National Association of Railroad and Utilities Commissioners is a voluntary association embracing within its membership the members of the regulatory commissions

and boards of the several states of the United States except two, one of which has no state regulatory commission.

By the constitution of the Association, the President of the Association may direct the General Solicitor to appear on behalf of the Association (as distinguished from a particular commission represented in its membership) in any proceeding pending before any court or commission in which, in the judgment of such President, appearance on behalf of the Association should be made. This brief is offered for filing on behalf of said Association by direction of the President, in the general public interest.

STATEMENT OF THE CASE.

The Illinois Commerce Commission (hereinafter called the Commission), one of the petitioners herein, is an agency of State government of the State of Illinois, existing under the provisions of the laws of the State of Illinois, and having jurisdiction over public utility companies, including warehousmen, operating within that State.

The respondents are engaged in the business of the public storage of grain for hire at Chicago, Illinois. Most of the grain stored by respondents is received from, or shipped to, States other than Illinois. (R. 59-77). Respondents conduct their respective warehousing businesses under authority of licenses issued by the Secretary of Agriculture of the United States hereinafter called the Secretary, pursuant to the United States Warehouse Act,[1] and under a schedule of rates, charges and practices duly filed with the Secretary, as required by the federal act.

Daniel F. Rice & Company (hereinafter called Rice), an Illinois partnership, is an owner, shipper and dealer in grain in the State of Illinois, and is, and for some years past has been, a customer of respondent warehousemen, storing grain in the elevators maintained by respondents and paying grain storage and warehousing charges thereon.

[1] Tit. 7 U. S. C., Secs. 241-73.

On July 28, 1944, Rice filed with the Commission a complaint against the respondents in this case, and the respondent (Board of Trade of the City of Chicago) in No. 471, October Term, 1946, alleging violations of the Public Utility Act and the Ilinois Grain Warehouse Act of the State of Illinois. In Paragraph 13 of the Rice complaint it is charged that all or some of the respondents have violated the laws of the State of Illinois in the following particulars: charging unjust, unreasonable, and discriminatory rates; pursuing discriminatory practices; operating without a state license; failing to secure Commission approval of contracts and security issues; mixing public grain with grain of different grades; failing to file, print and publish schedules of rates and charges; and abandoning service without Commission approval. (R. 21)

On August 30, 1944, respondents filed with the Commission their joint motion to dismiss (a) the complaint in its entirety, or (b) in the alternative, each of the separate charging paragraphs of the complaint. The stated grounds for the motion were that the subject matter of the complaint was beyond the jurisdiction of the Commission, and was exclusively within the jurisdiction of the Government of the United States by reason of Paragraph 3, Section 8 of Article I of the Constitution of the United States, and of the United States Warehouse Act, and the Commodity Exchange Act,[2] and of the official regulations duly promulgated thereunder. (R. 25)

On October 10, 1944, the Commission entered its order denying all motions of respondents to dismiss the Rice complaint and setting the cause for hearing before it on October 24, 1944. (R. 27) The respondents in this case and in No. 471, thereupon filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, separate complaints for the purpose of enjoining Rice from the further prosecution of its proceeding before the Commission; of enjoining the Commission from enter-

[2] Tit. 7 U. S. C., Sec. 1, et seq.

taining further jurisdiction in the matter; and the Attorney General of the State of Illinois from instituting any proceeding against respondents for the purpose of enforcing any order of the Commission in the Rice proceeding. (R. 3-15)

The defendants named in the respondents' complaint filed answers and motions to strike the complaint and dismiss the cause. (R. 36, 40, 43) The two causes were consolidated for hearing in the trial Court and, on June 26, 1945, that court entered a single order, dismissing both causes of action. (R. 91) Upon separate appeals to the Seventh Circuit Court of Appeals, the order of the trial court was reversed. (R. 126) The Commission and the Attorney General of the State of Illinois, and Rice, have filed here their petitions for a writ of certiorari to review the decision of the Seventh Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT.

(1) This case is important, not alone to the parties named in the caption, but to warehousemen, grain dealers, farmers, states, and the public generally, all of whom are necessarily affected by the precedent which the judgment below creates. The history and development of all present day public utility regulation stems from the early undertaking of the States to regulate warehouses and warehousemen. Since the landmark case of *Munn* v. *Illinois*, 94 U. S. 113, decided in 1876, warehousing has traditionally been a field for state regulation. The effect of the decision of the Court below, if permitted to stand, is to strip from the states this historic and important regulatory function as to every warehouseman who has obtained a license from the Secretary of Agriculture. Such a far reaching decision, so destructive of long exercised state jurisdiction, ought not to become operative without the sanction of this Court.

(2) The Court below held that State regulation of federally licensed warehousemen had been superseded in every

respect. Yet the federal act does not authorize the Secretary of Agriculture, among other things, to (a) fix or establish just and reasonable rates and charges; (b) prevent discriminatory rates and practices; (c) prevent the abandonment of warehousing service and capacity; or (d) approve or disapprove financial transactions or the issuance of securities. The effect of the decision of the Court below is therefore to create a hiatus in regulation, relieving warehousemen who secure federal licenses, from important phases of regulation which are essential to protect the public interest. Unless and until this Court finds that Congress intended to create such a vacuum in the regulation of warehouses, this undesirable result of the decision of the Court below ought not to become effective.

(3) The trial court held that "there is no direct conflict between a licensing system to protect against fraudulent warehouse receipts, and utility regulation to preserve the service in the public interest and it does not clearly appear that the state law has been completely superseded as to all of the matters covered by the complaint." (R. 90) The Circuit Court rejected this view, holding that state regulation had been wholly superseded. It is open to grave doubt whether the view of the law expressed by the Circuit Court will be adopted by this Court—a doubt which will almost surely produce further litigation in other states unless put to rest in this case by this Court.

(4) These questions are questions of substance and general importance relating to the construction of the Constitution and federal statutes. They have not been, but should be, settled by this Court. The misconstruction which the Court below has placed upon the pertinent federal statutes should be corrected now by a decision of this Court, so that the Illinois Commerce Commission and other state commissions vested with authority under state statutes, to regulate warehousing, may proceed with their official duties within such jurisdictional bounds as this Court may pre-

scribe; so that further unnecessary litigation may be avoided; so that warehousemen may know what will be the legal consequences of their acts; and so that the states may be left undisturbed in the exercise of their proper powers, which Congress designed to preserve.

THE QUESTION PRESENTED.

The petition for certiorari and brief in support thereof, filed by the Attorney General of Illinois and the Illinois Commission, present a number of procedural questions of great importance. This *amicus curiae* concurs fully in the views of the petitioner on these procedural questions and believes that they are determinative in this case and call for a reversal of the judgment. However, the far-reaching precedent created by the decision of the Court below, which gives paramount concern to this *amicus curiae*, relates to the decision of that Court on the merits of the controversy. Accordingly, this brief will deal solely with the question on the merits, which may be stated as follows:

> Has the federal government, by legislation, so occupied and preempted the field of regulation of grain warehousemen as to deprive the Commission of authority to grant the relief and therefore regulate in the manner prayed for by Rice?

SUMMARY OF ARGUMENT.

I. (Pages 11 to 13). Beginning with *Munn* v. *Illinois*, 94 U. S. 113, the regulation of public warehousemen has become a traditional function of State government. Because of this, the principles of supersedure should be strictly applied here in favor of continued validity of State authority. The problem is to ascertain the intention of Congress. But in supersedure cases it is uniformly held that the purpose of Congress to supersede is not lightly to be inferred, but the intention to do so must definitely and clearly appear. *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd.*, 315 U. S. 740, 749. The presumption favors continued

validity of State authority. *Reid* v. *Colorado,* 187 U. S. 137, 153. Supersedure can occur only where there is an irreconcilable conflict between the particular provisions of the federal and state statutes, or where the state statute plainly and palpably infringes the policy of a federal act. *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761, 766.

II. (Pages 13 to 45). The Rice complaint, which led the Commission to institute this proceeding, sought relief under nine separate and distinct provisions of the Illinois statutes. The injunction prevents the Commission from considering any one of these nine items. If, therefore, it can be established that the Commission's jurisdiction has not been superseded with respect to any one or more items, then granting the injunction was clearly erroneous. It is true that, unless the entire state statute is sustained, there is the possibility that the validated portions may not be considered severable from those which are held to be superseded. But this Court will not determine, in the first instance, whether a comprehensive state statute is severable. *Watson* v. *Buck,* 313 U. S. 387. Nor will the Court look, for supersedure, among state statutes which have not been applied. *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd., supra.* As yet, the Commission has been given no opportunity to apply any provision of the state statutes to these respondents.

The rate regulatory provisions of the Illinois statute, invoked by Rice, do not conflict with the Secretary's limited functions respecting rates. The Rice complaint asks the Commission to prescribe just, reasonable and non-discriminatory rates. The Secretary cannot prescribe rates, but has only power to revoke licenses because of unreasonable rates, and to require that warehouse rates be filed and posted. The mere acceptance of a schedule of rates for filing does not imply that they have been approved. *Interstate Commerce Commission* v. *Cincinnati etc. R. Co.,* 167 U. S. 479, 504. It cannot be assumed that a state agency will violate its statutory duty by prescribing unreasonable

or extortionate rates. If the Secretary finds state-prescribed rates to be unreasonable, the warehouseman may nevertheless continue to charge such rates by giving up his permissive federal license. But if it is the intent of the Warehouse Act that a licensee may not be compelled, by state action, to follow a course which compels revocation of the federal license, still no conflict with the state's general rate regulation is involved. Under the *Shreveport* doctrine, no requirement under the Warehouse Act can conflict with normal state regulation. Nor, under the principles of supersedure, is the Court required to anticipate every possibility of invalid action by the state. *W. W. Cargill Co.* v. *Minn. ex rel. Railroad and W. Com.*, 180 U. S. 452, 468.

The *Hefley case* (158 U. S. 98), relied upon by respondents, is not in point, for it involved interstate railroad rates, and the federal and state statutes there in question prescribed conflicting rules covering precisely the same matter.

The provisions of the Illinois statutes relating to discriminatory and preferential practices, do not conflict with the federal act. The federal statutes bearing on these matters do not cover all the types of discrimination charged in the Rice complaint. In no respect does the federal act give the Secretary power to order discontinuance of discrimination, or to direct revisions in the complained-of practices. None of the provisions of the federal act apply to grain stored by respondents for intrastate commerce. *United States* v. *Hastings*, 296 U. S. 188.

The provision of the Illinois Constitution prohibiting warehousemen from dealing in grain does not conflict with the federal act. Section 18 of the federal act, requiring warehouse receipts to disclose whether the warehouseman has stored his own grain, does not authorize or approve the practice or preclude a state from prohibiting the practice. The proviso to Section 18 indicates that Congress acknowledged the continued operation of state laws per-

taining to grain stored in federally licensed warehouses. A similar provision in another federal statute has been held not to preclude state laws on the subject. *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188. Enforcement of the state prohibition against such practice would not invalidate outstanding warehouse receipts, for the state orders and penalties would run against the warehouseman—there is no provision for confiscation of the grain.

The provisions of the Illinois statute respecting contracts between affiliates or with other public utilities, and respecting issuance of securities, do not conflict with the federal act. The federal act gives the Secretary no express authority as to these matters. The *Cloverleaf* case (315 U. S. 148) does not support the view that the Secretary has implied power to deal with these matters, since there the Court found the state act to be in conflict with the federal agency's expressly conferred powers.

State control of these contracts and security issues, would not conflict with any other function or power of the Secretary. Respondents' proposition that no state or local law must be permitted to affect construction projects required by the Secretary, would nullify zoning ordinances, fire and building codes, and Blue Sky laws, along with the state powers here in question. The only possibility of conflict envisaged by respondents involves a hypothetical case of the most imaginative character. The true question is not whether the state act *might* be so administered as to give rise to conflict, but whether it *is* being so administered here. *Terminal R. Assoc.* v. *Brotherhood of R. Trainmen*, 318 U. S. 1.

III. (Pages 45 to 66). The Illinois statutes regulating warehouses do not infringe the policy of the United States Warehouse Act. As a general rule, the failure of Congress to occupy the entire field is not to be taken as an intention to require that the unoccupied portion remain unregulated. *Kelly* v. *Washington*, 302 U. S. 1. As originally enacted in 1916, the federal act was not intended to

supersede all state regulation. The act was limited in scope to the establishment of a federal system of warehouse receipts, so that agricultural products could have value as collateral. This is indicated not only by an analysis of the statute, but also by examination of the legislative history.

The 1931 amendment did not change the scope of the act, but made federal action "exclusive" within the limited field covered by the original act. This is indicated by the language of the act. Amended section 29 still provides for cooperation with the states, and "Where the Government has provided for collaboration the courts should not find conflict." *Union Brokerage Company* v. *Jensen*, 322 U. S. 202. That the 1931 amendment of Section 29 did not operate to supersede all state regulation applicable to federally licensed warehousemen is also indicated by the legislative history, and by what this Court said in *United States* v. *Hastings*, 296 U. S. 188. Like conclusions, for like reasons, must be drawn regarding the 1931 amendment of section 6.

In considering this whole question of state infringement upon a policy of Congress, great weight must be given to the fact that we are here dealing with a long-exercised function of state government. *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144.

IV. (Pages 67 to 74). The Supreme Court cases holding that supersedure has occurred are clearly distinguishable. Most of these decisions involve matters which, unlike warehouse regulation, have been customarily controlled at the national level. Where preemption has been found in a field theretofore open to state regulation, this has been due to a conflict of precise regulations or a clash between the policy of the federal and state acts, both of which are lacking in the instant case. *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, although clearly distinguishable from the present case, represents about the farthermost point the Court has indicated a willingness to go in

finding supersedure. This case turned on a five to four decision and the essence of the views expressed in the dissenting opinion (and much of the exact language) became the majority opinion a year later, in *Penn Dairies* v. *Milk Control Com.*, 318 U. S. 261.

ARGUMENT.

I.

In the Absence of a Conclusive Showing of Congressional Intent, Federal Legislation Should Not Be Held to Supersede the Historic Function of the States in Regulating Public Warehouses.

In response to the pressures of the Granger movement, the Illinois constitution of 1870, and the statutes of Illinois, enacted the following year, provided for State regulation of public warehouses. The movement grew and bore fruit in other States until today forty-one states provide some degree of warehouse regulation and thirty states regulate warehouse rates and charges.[3]

In the case of *Munn* v. *Illinois*, 94 U. S. 113, upholding the original Illinois constitutional and statutory provisions relating to warehouses, the concept of businesses "affected with a public interest" had its American origin. Building on this concept, the States and the federal government; developed the comprehensive system of public utility regulation which we know today.

Is it possible that Congress intended to strike down state authority so early, continuously, and generally exercised as to become a traditional function of state government—authority which is at the very root of all public utility regulation in the country today?

When the question is revealed in this setting, it becomes apparent that there is here involved no ordinary case for

[3] The statutes of the various states, providing such regulation, are listed in an appendix attached to the brief herein filed by Daniel F. Rice & Co.

application of the principles of federal supersedure. Applied to such a case as this, every intendment of those principles which favors continued validity of state authority takes on added weight and vitality.

As in all cases involving statutory construction, the problem here is to ascertain the intention of Congress. In recognition of the serious effect which any federal supersedure may have upon the proper functioning of state government in the local public interest, the Court has uniformly held that the purpose of Congress to supersede or exclude state action is not lightly to be inferred. The intention to do so must definitely and clearly appear.

> *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd.*, 315 U. S. 740, 749;
> *Kelly* v. *Washington*, 302 U. S. 1, 12;
> *Illinois Cent. R. R. Co.* v. *Pub. Utilities Com. of Illinois*, 245 U. S. 493, 510;
> *Reid* v. *Colorado*, 187 U. S. 137, 148.

In all such cases the presumption is in favor of the continued validity of state authority. As the Court said, in *Reid* v. *Colorado, supra:*

> "The principle is universal that legislation, whether by Congress or by a state, must be taken to be valid, unless the contrary is made clearly to appear; . . ." (page 153)

Examination of the cases indicates that supersedure can occur only where there is an irreconcilable conflict between the particular provisions of the federal and state statutes, or where the state statute plainly and palpably infringes the policy of a federal act.

This analysis of the supersedure cases accords with what this Court recently said in *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state stat-

ute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, . . . or unless the state law in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy."

That this has been the consistent view of the Court over a long period of time is indicated by the following expression of the Court in *Sinnot* v. *Davenport*, 22 How. (U. S.) 227, 243, decided in 1859:

> "We agree, that in the application of this principle of supremacy of an Act of Congress in a case where the state law is but an exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two Acts could not be reconciled or consistently stand together; . . ." (page 247)

On the question of supersedure, therefore, the issues of this case come down to these two: (1) Is there an irreconcilable conflict between the provisions of the Illinois statutes regulating warehouses and those of the United States Warehouse Act?; and (2) Do the Illinois statutes regulating warehouses plainly and palpably infringe the policy of the United States Warehouse Act? These two questions are dealt with separately in the succeeding sections of this brief.

II.

There is No Irreconcilable Conflict Between the Provisions of the Illinois Constitution and Statutes Regulating Warehouses and Those of the United States Warehouse Act.

The Commission proceeding should not have been enjoined if any one of the Illinois Constitutional or statutory provisions invoked by Rice is found to be non-conflicting with the federal act.

The Rice complaint, filed with the Commission on July 28, 1944, sought relief under nine separate and distinct provisions of the Illinois statutes governing the regulation of

public warehouses. These items are set out in paragraph 13 of that complaint (R. 21), and are herein briefly summarized in the Statement of the Case.

The injunction ordered by the Court below prevents the Commission from considering any one of these nine items. This blanket injunction against continuance of the entire Commission proceeding was ordered on the theory that the Commission's jurisdiction as to each and every phase of warehouse regulation had been superseded with respect to federally-licensed warehousemen.

If, therefore, it can be established that the Commission's jurisdiction has not been superseded with respect to one or more items of relief prayed for, then granting of the blanket injunction was clearly erroneous.

This is true even though it be assumed that, as to some of the items of relief prayed for, the Commission's jurisdiction has been superseded. In that event the Court below ought to have permitted the proceeding to progress, subject to a later court review of the resulting Commission order. This would have given the Commission an opportunity to consider and act upon those items which remained within its jurisdiction. At the very least, the Court below, in these circumstances, ought to have prescribed the boundaries of permissible Commission action, rather than prohibiting all action by the Commission.

It may be contended that, if any provision of the Illinois regulatory statutes is found to be invalid, because in conflict with the federal act, then the entire state regulatory act must fall. This raises the question of the divisibility of the Illinois statute. However, the question of the severability of state statutory provisions is one for the Commission and the state court and not for a federal court, to pass on in the first instance. In this connection it may be noted that the Illinois Public Utility Act contains the usual severability clauses.[4]

---

[4] Smith-Hurd Ill. Ann. Statutes, Chap. 111-2/3, Sec. 93 (1921, June 29, Laws 1921, p. 702, art. VII, Sec. 89).

In *Watson* v. *Buck*, 313 U. S. 387, this Court reversed a lower court decision which held that eight sections of a 1937 Florida Act regulating the business of persons holding music copyrights were unconstitutional, and that therefore the entire act must fall, as the act was intended to form a "harmonious whole" and to "stand or fall together." In rejecting this view, the Supreme Court said:

> ". . . the very scope of these two statutes illustrates the wisdom of a policy of judicial self restraint on the part of federal courts in suspending state statutes in their entirety upon the ground that a complainant might eventually be prosecuted for violating some part of them. The Florida Supreme Court, which under our dual system of government has the last word on the construction and meaning of statutes of that state, has never yet passed upon the statutes now before us. It is highly desirable that it should have an opportunity to do so. There are forty-two separate sections in the two acts . . . No one can foresee the varying applications of these separate provisions which conceivably might be made. A law which is constitutional as applied in one manner may still contravene the Constitution as applied in another. Since all contingencies of attempted enforcement cannot be envisioned in advance of those applications, courts have in the main found it wiser to delay passing upon the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured. Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case. It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it. It is sufficient to say that the statutes before us are not of this type. Cases under the separate sections and paragraphs of the acts can be tried as they arise—preferably in the state

courts. Any federal questions that are properly presented can then be brought here . . ." (page 401)

In *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd., supra,* a similar view was expressed, the Court saying:

". . . Nor is the unconstitutionality of the provisions of the state Act which underlies the present order established by a showing that other parts of the statute are incompatible with and hostile to the policy expressed in the federal Act. Since Wisconsin has applied to appellants only parts of the state Act, the conflict with the policy or mandate of the federal Act must be found in those parts . . ." (page 750)

See, also, *W. W. Cargill Co.* v. *Minnesota ex rel. Railroad and W. Com.,* 180 U. S. 452, 466, 467, 468.

The Illinois Commission has been given no opportunity to apply any provision of the state statutes to these respondents. Until it does so, it cannot be determined whether the state statutes are applied in such a manner as to conflict with the federal act. Nor, until it does so, can a state ruling be obtained as to the severability of the state act. It follows from this that the injunction was improperly ordered unless it can be said now, by this Court that each and every provision of the Illinois statute invoked by Rice, if applied to any extent or degree to the respondents, would necessarily and irreconcilably conflict with the United States Warehouse Act, and has therefore been superseded.

Accordingly no attempt will be made in this brief to discuss every provision of the Illinois statute invoked by Rice. It will be sought, instead, to show that in at least several important particulars, such state statutes do not conflict with the federal act. If our argument proves convincing to the Court as to any one of those items then, as indicated above, the injunction was erroneously ordered.

The rate regulatory provisions of the Illinois statute, invoked by the Rice complaint, do not conflict with those of the United States Warehouse Act.

THE RATE FEATURES OF THE FEDERAL ACT ARE EXTREMELY LIMITED.

As indicated by the Court below (R. 119), the most important and controversial charge in the Rice complaint relates to respondents' warehouse rates. Paragraph 7 of the complaint alleges that each and all of the respondent warehousemen are unlawfully maintaining unjust, unreasonable and excessive rates and charges. (R. 19) Paragraph 13 (g) avers that respondents are charging unjust, unreasonable and discriminatory rates, in violation of sections 32, 38 and 41 of the Public Utility Act and section 15 of the Illinois Grain Warehouse Act. (R. 22) Paragraph 14 sets forth several respects in which the charging of unreasonable, excessive, and discriminatory rates, and other complained-of practices of the respondents, are injuring Rice and operating to the detriment of the general public interest. (R. 22) With respect to rates, the prayer of the Rice complaint asks the Commission to:

> "(d) Institute an inquiry and investigation of the unjust, unreasonable and discriminatory rates. . . .
>
> . . .
>
> "(f) After hearings, fix just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain." (R. 23)

Do the state rate regulatory statutes invoked by Rice, and the relief prayed for in the complaint, if granted, irreconcilably conflict with the rate provisions of the United States Warehouse Act? To determine this we must first turn to the federal statute.

There are only two sections of the United States Warehouse Act which specifically mention storage rates and charges. These are sections 25 and 18, the pertinent provisions of which read as follows:

Sec. 25. "The Secretary of Agriculture, or his designated representative, may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license to any warehouseman conducting a warehouse under this chapter . . . upon the ground that unreasonable or exorbitant charges have been made for services rendered. . . ."

Sec. 18. "Every receipt issued for agricultural products stored in a warehouse licensed under this Chapter shall embody within its written or printed terms . . . (e) the rate of storage charges; . . ."

In addition to these statutory references to rates, the Secretary, pursuant to his rule-making authority, conferred by section 28 of the Act, has promulgated two regulations pertaining to warehouse rates and charges. These regulations, as summarized by the respondents in the Court below, are as follows:

Reg. 5, Sec. 3. "A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the Act the warehouseman shall file with the department a copy of his rules and a schedule of charges to be made by him if licensed." Before making a change in rules or charges, a warehouseman must file a statement with the Department of Agriculture showing the proposed change and reasons therefor. Current rules and charges must be conspicuously posted in the principal office where receipts issued by the warehouseman are delivered to depositors.

Reg. 2, Sec. 7. Before revoking a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4."

The respondents also rely upon two additional sections of the act as vesting rate regulatory authority in the Secretary. These are sections 13 and 23, the pertinent provisions of which read as follows:

> Sec. 13. "Every warehouseman conducting a warehouse licensed under this chapter *shall receive* for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities."[5]
>
> Sec. 23. "Every warehouseman . . . shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require. . . ."

The respondent contends that section 13, quoted above, gives the Secretary authority to prevent discrimination in the matter of rates. The words "shall receive," shown in italics, plainly indicate, however, that the only discrimination there referred to is discrimination between persons in the matter of receiving grain for storage. If this section had been intended to include rate discrimination, then section 25, in providing for the revocation or suspension of licenses, would not have omitted all reference to "discriminatory" charges and referred only to "unreasonable or exorbitant" charges. Had Congress intended to give the Secretary authority to eliminate discriminatory rates and charges, it would have chosen plain and unambiguous language to say so, either in section 13 or in section 25.

Section 23, also quoted above, giving the Secretary power to require reports, does not appear to have any direct relation to rate regulation. Possibly the Secretary could facilitate rate regulatory functions, if he had any, by requiring the filing of reports containing data bearing on the

[5] Emphasis here, and elsewhere in this brief, is supplied.

matter. But the section does not itself confer any rate authority, nor is it shown that the Secretary has ever utilized the power there granted by requiring the filing of reports in aid of rate regulation.

Accordingly, it appears that the full extent of federal "rate regulation" under the United States Warehouse Act, and the regulations issued thereunder, is comprised of the following four items: (1) warehousemen must file a schedule of charges with the Secretary as a condition to securing a license; (2) warehousemen must file with the Secretary any change in charges and reasons therefor; (3) warehousemen must post their rules and charges in a conspicuous place; and (4) the Secretary may, after hearing, revoke or suspend a federal license for unreasonable or exorbitant charges.

The exceedingly meager and limited nature of the Secretary's power over rates, as analyzed above, becomes apparent when comparison is made with the usual and ordinary provisions relating to rates which are to be found in any comprehensive regulatory statute. For example, the Illinois Public Utility Act, which Rice has invoked in this case, contains the following rate regulatory provisions wholly absent from the federal statute and regulations thereunder:

(1) Power to prescribe rates. (Sec. 41)

(2) Forbidding rate discriminations. (Secs. 37, 38)

(3) Power to suspend rate changes pending investigation. (Sec. 36)

(4) Prohibiting rebates and refunds. (Secs. 37, 39)

(5) Reparations for overcharges. (Sec. 76).

No Actual or Threatened Rate Conflict is Involved Here.

The only rate relief prayed for in the Rice complaint is to "fix just, reasonable, non-discriminatory and non-preferential rates and charges . . ." (R. 23) The Illinois Commission has power to grant this relief. The Secretary has no such power. This the respondent admits. Where then is the "direct and positive" conflict, to use the language of *Sinnot* v. *Davenport*, 12 How. (U. S.) 227? Since the federal act contains no rate-prescribing power and the state act does, and since the rate-prescribing power is the only state rate power invoked in this case, how can it be said that "the two Acts could not be reconciled or consistently stand together," to again use the language of *Sinnot* v. *Davenport*?

Far from there being any direct, positive, or irreconcilable conflict between the federal and state acts, the truth is that, federal authority being wholly absent, there is no vestige of conflict as to the only state rate function sought to be applied here.

Nevertheless, the Court below believed that there might be direct conflict in the matter of rate regulation, saying:

> ". . . It must be remembered that one of the conditions upon which the Secretary is authorized to issue a license is the showing by the applicant therefor that the charge which the latter proposes to make is not unreasonable or exorbitant. This is a matter solely for the determination of the Secretary. Assuming that the state authority has the right to fix such rate, it would of course have the right to determine a rate higher than that determined by the Secretary to be not unreasonable or exorbitant. In such a situation the warehouseman would be subjected to the penalty provided for a failure to comply with the state rate, and at the same time in order to procure or retain a federal license he would be compelled to violate such rate. Certainly a warehouseman could neither fix nor raise his charge without the approval of two separate and distinct authorities. . . ." (R. 119)

The fundamental error in this statement is the assumption that warehouse rates on file with the Secretary have been approved as not being unreasonable or exorbitant.

The Secretary's regulations (Reg. 5, Sec. 3, quoted above) stipulate that a warehouseman shall not make any unreasonable or exorbitant charge; that, before a license is granted, the warehouseman shall file a copy of his rules and a schedule of charges to be made by him if licensed; and that, before making a change in charges, a warehouseman must file a statement showing the proposed change and reasons ther for. But neither the statute nor the regulations provide that such rates shall be approved as being reasonable. The filed rates are merely the licensee's conception of reasonable charges, and the only time they are subjected to a determination of reasonableness by the Secretary is if and when a license revocation or suspension proceeding is instituted.

Here, as in the case of all rate regulatory systems, the mere acceptance of a schedule of rates for filing does not imply that they have been approved. This rule is so well settled that no extensive citation of authority is required, but see:

Interstate Commerce Commission v. *Cincinnati etc. R. Co.*, 167 U. S. 479, 504;
Cleveland v. *Hope Natural Gas Co.*, 44 P. U. R. (N. S.) 1.

Suppose, then, that the state orders a change in existing warehouse rates on the ground that existing rates are unjust, unreasonable or discriminatory. Such an order would not conflict with any order of the Secretary, for, as pointed out above, there is no federal procedure for approval or disapproval of such rates. Upon issuance of such a state order the warehouseman would be required, under the federal regulations, to file the change with the Secretary, giving the reasons therefor. Again this could result in no conflict, for the Secretary has no function upon the filing of

such changes except to receive them, unless, of course he determines to institute a license revocation proceeding.

The Court below suggests that the state might fix a rate higher than that determined by the Secretary to be not unreasonable or exorbitant. As shown above, this could occur only where, after the state prescribed an exact rate, the Secretary thereafter determined, in a license revocation procedure, that such prescribed rate is unreasonable and exorbitant.

Naturally the first answer to this suggestion is that it pre-supposes the occurrence of a highly unlikely event. The tendency of state rate regulation would be to reduce warehouse rates, not increase them. The Rice complaint seeks a reduction in rates and the elimination of discriminatory rates. If the present warehouse rates on file with the Secretary have not moved the Secretary to institute a license revocation proceeding, certainly no newly prescribed level of rates to come out of this or any other state proceeding would be likely to call for such action. The respondents are contesting state jurisdiction here not because they fear the state will permit them to charge higher rates, but because they anticipate that a lower level of rates may be prescribed. Can anyone seriously believe that respondents are here fighting to save themselves from being required to increase their rates and so risk revocation of their federal licenses?

No prescription of rates by the state commission under the Illinois statute can conflict with any requirement of the Secretary under the United States Warehouse Act for the reason that the federal act gives the Secretary no power to prescribe rates. His sole power, as respects rates, is to revoke the license of a warehouseman if and when he finds that unreasonable and extortionate rates are being imposed by the licensee. Until such rates are imposed no such finding can be made by the Secretary.

It cannot be assumed that a state agency, the statutory duty of which is to require just and reasonable rates, will

violate its duty, and prescribe unreasonable or extortionate rates. Accordingly, it cannot properly be assumed that conflict can ever exist between requirements under the state statute and requirements under the federal act.

If, however, be it assumed the state commission will do what the state statute forbids it to do, and will prescribe rates for a warehouseman which are unreasonable and exorbitant, and that the Secretary will so find, there will still be no conflict, for the Secretary is given no power under the Warehouse Act to require rates to be changed. A warehouseman, whose rates have been found exorbitant by the Secretary, in a license revocation proceeding, may continue to impose rates thus disapproved by the Secretary, even in the entire absence of any state law requiring their imposition. If he chooses to do that, he may suffer a revocation of his federal license, and thus lose the status of a federal licensee, and such benefits as result to him from that status, but he may continue to charge the rates. How, then, can it be claimed that any conflict can result from any act of rate regulation by the state commission?

UNDER THE SHREVEPORT DOCTRINE, NO REQUIREMENT UNDER THE WAREHOUSE ACT CAN CONFLICT WITH NORMAL STATE REGULATION.

However, if it be said that the intent of the Warehouse Act is to enable the Secretary to cause a licensee to change his rates, found by the Secretary to be exorbitant, to avoid revocation of his license, there is still no conflict between that power, and any proper exercise of any power of the state commission under the Illinois statute. And there can be no conflict, even if the state commission improperly exercises its power, and prescribes a rate or rates found exorbitant by the Secretary, *except as to such rates as are thus found exorbitant.* As to those rates, the Secretary's finding may operate to supersede the state requirement to the extent necessary to enable the warehouseman to conform his rates to the finding.

The situation in such case would be analogous to that dealt with in the *Shreveport* case, 23 I. C. C. Rep. 31, *Houston E. & W. Texas Ry. Co.* v. *The United States*, 234 U. S. 342, decided by this Court in 1914. In that case the Texas Commission had prescribed intrastate railroad rates which the Interstate Commerce Commission found to be on a lower basis than rates found reasonable for application to interstate traffic, and unduly preferential of Texas cities and discriminatory against Shreveport, in violation of the provisions of the Act to Regulate Commerce (now the Interstate Commerce Act). Under the Act, as it then stood, the Commission had no power to prescribe intrastate rates for any purpose whatever. However, the Act did forbid carriers to give any undue advantage or preference to any person or locality, and did empower the Commission to require carriers to cease and desist from any violation of the Act. Upon its finding that the intrastate rates, in effect under the order of the Texas Commission, operated to give an undue and unlawful preference to Texas localities, the Commission ordered the carriers to "establish and maintain rates no higher" than those found reasonable for interstate application; and that order was sustained. The Court said:

> ". . . The commerce court sustained the authority of the Commission, and it is clear that we should not reverse the decree unless the law has been misapplied. This we cannot say; on the contrary, we are convinced that the authority of the Commission was adequate.
>
> "The further objection is made that the prohibition of section 3 is directed against unjust discrimination or undue preference only when it arises from the voluntary act of the carrier, and does not relate to acts which are the result of conditions wholly beyond its control. . . . The reference is not to any inherent lack of control arising out of traffic conditions, but to the requirements of the local authorities, which are assumed to be binding upon the carriers. The contention is thus merely a repetition in another form of the argument that the Commission exceeded its power; for it would not be contended that local rules could nullify the law-

ful exercise of federal authority. *In the view that the Commission was entitled to make the order, there is no longer compulsion upon the carriers by virtue of any inconsistent local requirement.* We are not unmindful of the gravity of the question that is presented when state and Federal views conflict. But it was recognized at the beginning that the nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress and of the agencies it lawfully establishes must control.

"In conclusion: Reading the order in the light of the report of the Commission, it does not appear that the Commission attempted to require the carriers to reduce their interstate rates out of Shreveport below what was found to be a reasonable charge for that service. *So far* as these interstate rates *conformed to what was found to be reasonable by the Commission, the carriers are entitled to maintain them, and they are free to comply with the order by so adjusting the other rates, to which the order relates, as to remove the forbidden discrimination.* But this result they are required to accomplish. . . ." (pages 359-360)

While the Act to Regulate Commerce, under which the *Shreveport* case was decided, contained a positive injunction held to be applicable to intrastate rates, and while the Act contained a provision under which the Interstate Commerce Commission was empowered to make orders applicable to such rates, yet those provisions operated only towards the correction of abuses, and did not in any way conflict with, or restrain, normal and proper rate regulation by the States. This was shown conclusively by the judgment of this Court in the *Minnesota Rate Cases*, 230 U. S. 353, decision in which was handed down in 1913, the year preceding the *Shreveport* case.

In the *Minnesota Rate Cases*, it was urged that the Act to Regulate Commerce should be construed to prevent a state from requiring intrastate rates to be maintained on a lower level than comparable interstate rates, established

under the Act. This Court rejected that contention, saying in part:

> "The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. . . . But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary, under existing conditions of transportation to conserve and promote the interests of interstate commerce. *If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine*, within the limits of its constitutional authority over interstate commerce and its instruments *the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not, under the guise of construction, to provide a more comprehensive scheme of regulation than Congress has decided upon.* Nor, in the absence of Federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power." (pages 432-433)

Thereafter, in Section 13 (3) and (4) of the Act, as amended in 1920, the Interstate Commerce Commission was enabled to forbid the continuance of intrastate rates found by it to cause "any undue, unreasonable or unjust discrimination *against interstate or foreign commerce*," such discrimination was expressly forbidden, and the Commission was given power to prescribe intrastate rates to remove any discrimination found. Nevertheless, until the Commission finds that intrastate rates established under state law cause unlawful discrimination such rates are unaffected by the statute. *Board of Railroad Com.* v. *The Great Northern Ry. Co.*, 218 U. S. 412, 430. And when a finding of unlawful discrimination has been made intra-

state rates are superseded and displaced only to the extent specified in the order of the Interstate Commerce Commission declaring the discrimination. *Increases in Utah Freight Rates and Charges*, 255 I. C. C. 97.

It would seem undeniable that Congress, in the Interstate Commerce Act, has gone much farther in occupying the field of intrastate railroad rate making than in the United States Warehouse Act, it has gone as respects the rates of warehouses licensed under that Act; and yet the cases cited demonstrate that no conflict has resulted between such federal regulation of intrastate railroad rates as is exercised through the Interstate Commerce Commission and normal and proper regulation of such rates by state authorities. How, then, can it be contended that there is any such conflict between normal regulation of warehouse rates under the Illinois statute here considered and any requirement of or under the United States Warehouse Act?

UNDER PRINCIPLES OF SUPERSEDURE, THE REMOTE POSSIBILITY OF FUTURE CONFLICT IN A PARTICULAR CASE WILL NOT JUSTIFY BLANKET NULLIFICATION OF GENERAL STATE RATE REGULATION.

The Court, in this proceeding, is not required to anticipate every possibility of invalid action by the state, and certainly should not do so where the relief prayed for is a general injunction against all state regulation in a particular field. The respondents will have an adequate remedy if and when the state issues an order which is, in fact, invalid. As the Court said, in *W. W. Cargill Co.* v. *Minn. ex rel. Railroad and W. Com., supra*, in rejecting the contention that state warehouse regulation should be enjoined because it might be administered in an unconstitutional manner:

> ". . . If the commission refused to grant a license, or if it sought to revoke one granted, because the applicant in the one case, or the licensee in the other, refused to comply with statutory provisions or with rules or regulations inconsistent with the Constitution of the

> United States, the rights of the applicant or the licensee could be protected and enforced by appropriate judicial proceedings." (page 468)

The same view was well stated in *Watson* v. *Buck*, quoted at some length at an earlier point in this brief.

The respondents rely chiefly upon *Gulf, Colorado and Santa Fe Railway Company* v. *Hefley*, 158 U. S. 98, as demonstrating that rate authority of the character conferred upon the Secretary by the United States Warehouse Act supersedes all state rate regulation of federally licensed warehousemen. There the Interstate Commerce Act specifically required carriers to charge the rates filed with the Interstate Commerce Commission. A Texas statute, on the other hand, required carriers to charge the rate named in the bill of lading. A particular bill of lading named a rate lower than indicated by the filed tariff, and the carrier insisted on collecting the tariff rate. A judgment against the carrier for the sum collected in excess of the rates shown in the bill of lading, was reversed by this Court. The Court said, in part:

> "Clearly the state and the national acts relate to the same subject-matter and prescribe different rules. By the state act the bill of lading is made controlling as to the rate collectible, and a failure to comply with that requirement exposes the delinquent carrier to its penalties, while the national statute ignores the bill of lading and makes the published tariff rate binding, and subjects the offender, both carrier and agent, to severe penalties. The carrier cannot obey one statute without sometimes exposing itself to the penalties prescribed by the other. * * *. The question is not whether, in any particular case, operation may be given to both statutes, but whether their enforcement may expose a party to a conflict of duties. It is enough that the two statutes operating upon the same subject-matter prescribe different rules. In such case one must yield, and that one is the state law." (page 102)

The *Hefley* case involved railroad rates applicable to traffic moving interstate. Ever since *Wabash etc. Ry.* v.

Illinois, 118 U. S. 557, interstate railroad rates have been held beyond the reach of state regulation, not because of supersedure by a federal statute, but upon the Constitutional ground that, as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. *Minnesota Rate Cases, Simpson* v. *Shepherd*, 230 U. S. 352, 399. But no such Constitutional principle has ever been applied in the case of state regulation of warehouse rates, and this court has uniformly recognized the propriety of state action in that field. *Munn* v. *Illinois*, *supra*; *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144.

A further point of difference between the *Hefley* case and the instant one lies in the fact that the Interstate Commerce Act, while not as comprehensive at the time of the *Hefley* case as it is today, was, even then, primarily a rate regulatory statute, having as its principal purpose the prevention of rate discrimination and secret rebates. Here the rate features of the United States Warehouse Act are purely incidental to the primary objective of establishing a sound system of warehouse receipts, the meager rate powers being only for the purpose of limiting the privileges of the federal warehouse receipt system to those who are equitably entitled thereto.

But, still more important, is the fact that the federal and state statutes involved in the *Hefley* case prescribed conflicting rules covering precisely the same matter. The federal act stipulated that the tariff rate is controlling. The state act specified that the bill of lading rate should control. The case itself presented a situation where a direct and irreconcilable conflict had arisen. Under elementary principles of supersedure, the dilemma had to be resolved in favor of the federal act.

No comparable situation exists in the instant case. No one has contended here that the state statute does or could authorize a federally-licensed warehouseman to disregard the rates on file with the Secretary, or to desist from filing rate schedules with the Secretary. If the state orders a

change in rates, the federally-licensed warehouseman will have to file the new rates with the Secretary, but obviously this involves no conflict. The federal act contemplates that rate changes will be made and indicates how this is to be accomplished.

But, as pointed out above, even if there is the possibility that state rate regulation might, under some future set of circumstances, be found in conflict with the federal act, this does not call for blanket nullification of state regulation at this time. Few state regulatory statutes could withstand the challenge of supersedure if they were required to run the gauntlet of every hypothetical source of conflict that can be imagined. The principles of supersedure heretofore mentioned call for an attempt to find reconciliation, not a search for possible conflict.

The true question is not whether the state act might be so administered as to give rise to conflict, but whether it *is* being so administered here. As this Court said, in *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd., supra,* holding that supersedure had not occurred:

> ". . . Section 10 (of the National Labor Relations Act) grants the federal Board 'exclusive' power of enforcement. It is not sufficient, however, to show that the state Act *might* be so construed and applied as to dilute, impair, or defeat those rights. Watson v. Buck, 313 U. S. 387. . . ." (page 750)

Respondents' effort here to conjure up a situation where conflict between federal and state rate regulation might develop is similar to the arguments which were advanced in *Terminal R. Assoc.* v. *Brotherhood of R. Trainmen,* 318 U. S. 1, and it should draw the same response from this Court. In that case, the Illinois Commission, as an outgrowth of a dispute between the carrier and its employees, ordered the railroad to attach cabooses to its interstate trains. In holding that the state statute, under which the Commission had proceeded, had not been superseded by the Railway Labor Act, the Court said:

"State laws have long regulated a great variety of conditions in transportation and industry, such as sanitary facilities and conditions, safety devices and protections, purity of water supply, fire protection, and innumerable others. Any of these matters *might*, we suppose, be the subject of a demand by workmen for better protection and upon refusal *might* be the subject of a labor dispute which would have such effect on interstate commerce that federal agencies *might* be invoked to deal with some phase of it. But we would hardly be expected to hold that the price of the federal effort to protect the peace and continuity of commerce has been to strike down state sanitary codes, health regulations, factory inspections, and safety provisions for industry and transportation. . . . it cannot be that the minimum requirements laid down by state authority are all set aside. . . ." (page 7)

The provisions of the Illinois statutes relating to discriminatory and preferential practices, do not conflict with the provisions of the United States Warehouse Act.

Aside from the matter of rate discrimination, which has already been discussed in this brief, the Rice complaint charges that respondents have been guilty of the following discriminatory practices:

"(a) Mixing high quality public grain with inferior grain owned or acquired by the defendant warehouseman to reduce grain delivered to the point of minimum quality within the established grain trade.

"(b) Sacrificing part of storage charges to offset purchases and sales of grain and otherwise manipulating and rebating storage charges on grain stored in private warehouse space.

"(c) Furnishing transit tonnage to owners of public grain of the most undersirable type, while withholding for their own use the most desirable transit tonnage, thereby placing the owners of public grain at a distinct disadvantage in merchandising grain in storage.

"(d) Providing for storage of public grain in old wooden warehouses carrying exorbitant insurance

premium rates, while storing the warehousemen's own grain in modern warehouses with reasonable insurance premium rates.

"(e) Unduly and imprudently delaying loading of grain after return of warehouse receipt issued by the particular warehouseman, the tender of proper charges and the receipt of instructions to load grain for delivery." (R. 20)

Paragraph 16 (g) of the Rice complaint prays for the following relief as to discriminatory practices:

"(g) After hearings, issue an order prohibiting the discriminatory practices enumerated above, and establishing just, reasonable, safe, proper, adequate and efficient grain storage and warehousing service." (R. 24)

It is agreed by all that these alleged discriminatory practices are prohibited under the state statute and that the State Commission has authority to order the discontinuance of any such discrimination. The only reference to discrimination, in the United States Warehouse Act, is that contained in section 13, reading as follows:

"Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities."

As heretofore indicated, the foregoing section prohibits discrimination, as between persons, in the *receiving* of grain for storage, but has nothing to say regarding any discriminatory practices after the grain is received and stored. Nor does the federal act anywhere give the Secretary authority to order elimination of discriminatory prac-

tices except that, with respect to discrimination in the receiving of grain, the Secretary may revoke the license.

The federal act and the Secretary's regulations contain some additional provisions which bear upon subparagraph (a) of the Rice complaint, quoted above, relating to the mixing of high quality grain with inferior grain. These additional provisions, as summarized by the respondents in their brief to the Court below, are as follows:

UNITED STATES WAREHOUSE ACT.

Sec. 15. Fungible agricultural products in a federally licensed warehouse shall be inspected and graded by an inspector licensed to grade under the Federal Act.

Sec. 16. Warehouseman may mingle fungible agricultural products with other products of the same kind and grade but warehouseman shall not mix fungible agricultural products of different grades.

Sec. 30. Fine and imprisonment is provided for any person who fraudulently grades any agricultural products stored under the provisions of the Act.

Regulations.

Reg. 5, Sec. 18. Warehouseman may not mix lots of different grades of grain except when identity of grain stored is to be preserved.

Reg. 5, Sec. 12. Warehouseman shall accept grain for storage and deliver grain out of storage in accordance with the grades of such grain determined by duly licensed inspector. Appeal may be taken from inspector's grading.

Reg. 5, Sec. 16. Warehouseman shall deliver fungible grain to lawful holder of warehouse receipt of the grade and quantity named in such receipt.

These additional provisions of the federal act and regulations, taken together, may be considered as covering all the matters of discrimination in subparagraph (a) of the

Rice complaint, quoted above. The only enforcement provision, however, aside from the penal provision of section 30, where grain has been fraudulently graded, is the power vested in the Secretary to revoke the federal license. The Secretary has no authority to order the discrimination eliminated and to prescribe the manner in which this shall be accomplished.

Moreover, neither the penal provisions of section 30, nor the license revocation procedure of section 25, are in any way applicable to grain stored in the course of local business and not stored for interstate or foreign commerce. *United States* v. *Hastings, supra.* While the grain stored by respondents is predominantly stored for interstate or foreign commerce, up to 15 per cent of the grain stored by some respondents is neither received from nor shipped to States other than Illinois. (R. 67, 74)

In any event, the federal statutory and regulatory provisions quoted above have no application to the four other subparagraphs of the Rice complaint charging discriminatory practices. As to subparagraphs (b), (c) and (d), pertaining to rebates, transit tonnage and storage in old warehouses, the federal statute and regulations are completely devoid of any provision which would give the Secretary power to consider the Rice Complaint, and to act thereon.

As to subparagraph (e), relating to delay in loading grain, section 21 of the federal act provides that warehousemen shall "without unnecessary delay" deliver stored products upon proper demand. But here again, the Secretary has no authority to enforce this provision except by instituting a license revocation procedure, and the section has no application to grain stored for intrastate commerce.

As pointed out in the next section of this brief, the purpose of Congress in enacting the United States Warehouse Act was to provide a system of warehouse receipts which would establish the integrity of agricultural products as

collateral. It is therefore understandable why the federal act is so lacking in provisions for effective elimination of discriminatory practices and, accordingly, apparent that Congress did not intend to strip the states of this regulatory power.

State consideration and action upon these items of discrimination charged in the Rice complaint could not possibly interfere with the Secretary's function in assuring the integrity of federal warehouse receipts. Accordingly it is fair to conclude that there is no irreconcilable conflict as to these matters which calls for supersedure of the state statutes pertaining to discriminatory and preferential practices.

The provision of the Illinois Constitution prohibiting public grain warehousemen from dealing in grain does not conflict with the provisions of the United States Warehouse Act.

Article XIII of the Illinois Constitution of 1870, as interpreted and sustained in *Hannah* v. *People*, 138 Ill. 77, declares unlawful and contrary to the public policy of the state, the practice of warehousemen in occupying a dual and conflicting position as public grain warehousemen and at the same time dealing in grain, and of storing or mixing in their own public warehouse grain in which they have an interest, direct or indirect.

Paragraph 10 of the Rice complaint (R. 20) invokes this Constitutional provision. Affidavits filed by respondents disclose that several million bushels of grain owned by them and covered by federal warehouse receipts were stored in respondents' own warehouses.

The Court below held that this state Constitutional provision had been superseded by the federal act, saying:

> ". . . Section 18 of the Act, (Par. 260 U. S. C. A.) provides for the contents of receipts, and Par. (i) states. 'If the receipt be issued for agricultural products of which the warehouseman is owner, either solely

> or jointly or in common with others, the fact of such ownership shall be shown. It is argued that this provision does not authorize a federally licensed warehouseman to store his own grain. We think it does. The fact that the Secretary has permitted such storage *indicates that* he has so *construed the Act. To* sustain defendants' contention on this point would immediately invalidate receipts of the value of millions of dollars. It would seriously impair one of the main purposes of the Act, that is, the integrity of warehouse receipts." (R. 120)

Section 18 of the federal act, referred to in the above-quoted excerpt from the opinion of the Court below, and Regulation 4, Section 1(c), which is to the same effect, contain no prohibition against a warehouseman storing his own grain, neither do they expressly authorize and approve such practice. Their only purpose is to force the warehouseman to disclose the practice.

Why does the federal act require disclosure of this practice? Is it not because the practice is suspect and dealers in warehouse receipts are entitled to know what is going on? And if the practice has been recognized by Congress as of doubtful character, how can it be said that state prohibition of the practice conflicts with the federal policy?

That Congress acknowledged the continued operation of state laws pertaining to grain stored in federally licensed warehouses is indicated by one of the provisos to this same section 18. This proviso reads:

> "*Provided*, That unless otherwise required by the law of the State in which the warehouse is located, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: . . ."

All that Section 18 does, in effect, is to declare that storage of a warehouseman's own grain in his own ware-

house, is unlawful unless certain conditions are complied with, to wit, disclosure of the practice in the warehouse receipt. But this is not to say that, if this condition is complied with, the practice will be lawful, notwithstanding express prohibitions contained in state statutes.

The situation is similar to that involved in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188. There the federal Grain Futures Act required persons contracting for grain futures to comply with certain conditions; including the condition that the contract be made by or through a member of a board of trade which has been designated by the Secretary of Agriculture. A Missouri statute, however, unconditionally forbade all contracts of this nature. In holding that the Missouri statute had not been superseded, this Court said:

> "The Federal Act declares that contracts for the future delivery of grain shall be unlawful unless the prescribed conditions are complied with. It does not provide that if these conditions have been complied with the contracts, or the transactions out of which they arose, shall be valid. It does not purport to validate any dealings. Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded. . . ." (page 198)

If the statutes or Constitution of a particular state, as in Illinois, prohibit a grain warehouseman from storing his own grain in his own warehouse, the warehouseman, complying with such provision, would simply desist from such practice and there would accordingly be no occasion for inserting any item on this matter in the federal warehouse receipt. There is no conflict here. And if the laws of another state do not prohibit such practice, and the warehouseman does store his own grain in his own warehouse, the federal receipt will so indicate. Again there is no conflict.

Nor is the integrity of the federal receipt affected in any manner because of lack of uniformity among the states. Warehousemen operating in the individual states will presumably know the law of those states, and no one of them operates in so many states that ascertainment of the state law would be burdensome.

So far as dealers in receipts, and holders of receipts, are concerned, all they need to look at is the receipt itself. If the receipt fails to disclose that the warehouseman is storing his own grain, the receipt holder is not concerned whether this is because of the warehouseman's voluntary choice or because a state law forbids the practice. And if the receipt recites that the warehouseman is storing his own grain, the receipt holder need not check to determine whether the warehouseman may or may not do this under the state law. Even if the state law prohibits such practice, this does not invalidate outstanding receipts. The Illinois State Constitution does not provide for confiscation of wheat unlawfully stored. The state's recourse is to order the warehouseman to cease the practice in the future and, perhaps, penalize him personally for past violations. In neither case is the receipt-holder affected.

Failure of the Court below to perceive this point apparently accounts for the ruling on this matter. The Court gave great weight to its conclusion that "To sustain defendants' contention on this point would immediately invalidate receipts of the value of millions of dollars." (R. 120) As shown above, not a dollars worth of receipt-value would be affected, since the state's enforcement of the Constitutional provision would run solely against the warehouseman.

Viewed in this light, we submit that the state constitutional provision in question does not irreconcilably conflict with the federal act.

The provisions of the Illinois statute respecting contracts between affiliates or with other public utilities, and respecting issuance of securities, do not conflict with any provision of the United States Warehouse Act.

Paragraph 13 of the Rice complaint (R. 21) alleges, among other things, that all or some of the respondent warehousemen have violated the laws of the State of Illinois by:

> "(a) Failing to secure prior approval of the Illinois Commerce Commission before entering into management, construction, engineering, supply, financial and similar contracts and arrangements between such warehousemen as public utilities and an affiliate, as required by Section 8 (a) of the Public Utility Act.
>
> "(b) Failure to secure prior approval of contracts, leases, etc., between such warehousemen and other public utilities, as required by Section 27 of the Public Utility Act.
>
> "(c) Failing to secure authorization of the commission before issuing securities payable at periods of more than twelve months after date, as required by Section 21 of the Public Utility Act."

The respondent concedes and the Court below acknowledges that the United States Warehouse Act contains no provisions expressly relating to the matters referred to in these paragraphs of the Rice complaint. But, for the purpose of demonstrating that state action as to these matters has been superseded with respect to federally-licensed warehousemen, it is said: (1) that the Secretary has implied power to deal with these matters; and (2) that state action as to these matters would conflict with the regulations and orders of the Secretary relating to other matters expressly covered by the federal act.

The suggestion that the Secretary had implied power to approve or disapprove contracts between affiliates or between warehousemen, and implied power to regulate the

issuance of securities, was not advanced by respondents in the Court below, but is to be found only in the opinion of the Circuit Court. The Court there covered the matter in these words:

> "... While we find nothing in the Act which expressly relates to such matters, we think, for the reasons already stated, that the Secretary has implied authority to deal therewith." (R. 122)

At an earlier point in the opinion, the Court below relied upon *Cloverleaf Butter Co.* v. *Patterson, supra,* to support the finding that the Secretary has implied power to deal with all the matters charged in the Rice complaint. (R. 118)

The *Cloverleaf* case, 315 U. S. 148, is discussed at some length in the last section of this brief. It is sufficient here to point out that neither the excerpt quoted by the Court nor any other language of that decision bears upon the question of the implied authority conferred by a federal statute. The question there was the state's right to inspect, seize and detain packing stock butter, from which renovated butter is made. The Court, in voiding state regulation of packing stock butter, did not say that the federal agency had "implied" authority to regulate such butter, it expressly held that "the Secretary of Agriculture of the United States cannot condemn the packing stock butter." (page 166). What the Court did hold was that such regulation by the state interfered with the federal agency's express authority to regulate renovated butter. The Court ruled that "confiscation by the state of material in production nullifies federal discretion over ingredients." (page 168)

Not only did the Court in the *Cloverleaf* case fail to make any pronouncement on the question of implied powers under a federal statute—it clearly indicated that the federal statutes are to be strictly construed when the question is one of supersedure. Said the Court:

> "When the prohibition of state action is not specific but inferable from the scope and purpose of the federal legislation, it must be clear that the federal provisions are inconsistent with those of the state to justify the thwarting of state regulation." (page 156)

See, also, *Penn Dairies* v. *Milk Control Com.*, 318 U. S. 261, quoted in the final section of this brief.

But it is said that state action as to these contracts and security issues would conflict with the regulations and orders of the Secretary relating to other matters expressly covered by the Federal act. To support this view the respondents, in the Court below, put forth, as an example, what might happen if the Secretary, following an inspection of the warehouse, ordered installation of new equipment and facilities costing $150,000. To finance this, respondent assumes that the warehouseman enters into a contract with an affiliate and another utility under which he borrows $100,000, and issues $50,000 worth of debenture bonds for the balance.

Having portrayed this wholly imaginative episode, the respondents, in their brief below, then inquire:

> "Are these transactions subject to State approval when refusal would cause the revocation of his federal license? Is the Secretary of 'Agriculture's power limited by state approval? State approval of a federal licensee's contracts with affiliates, other utilities or securities would in such a case clearly hamper the administration of the Federal Act." (Resp. brief, page 56)

The plain implication of this argument is that all state or local laws and regulations which may be involved in connection with new warehouse construction or facilities ordered by the Secretary are to be completely ignored. A local zoning ordinance preventing the construction of an addition to a warehouse would be set for naught; state or local fire and building codes could be disregarded; state Blue Sky laws requiring the registration of security issues

could be by-passed—along with state laws requiring approval of contracts between utilities or utility affiliates and requiring approval of securities.

Under the respondent's reasoning, a federally-licensed warehouseman could, in aid of a remodeling or construction project ordered by the Secretary, enter into a contract with other types of utilities not subject to any control under the federal act (such as warehouses operating under state license), and, no matter how detrimental that contract might be to the public interest served by that other utility, the state would have no power to disapprove, or require revisions, of such contract.

Merely to state the consequences of the respondents' theory, carried to its logical conclusion, is to show its inadmissibility. If Congress, while failing to make any provision in the federal act for regulation of such contracts and security issues, had intended to strip the states of all authority over such matters, we would expect to find some expression of this intent in the language of the Act. As will be more fully discussed in the next section of this brief, the use of the word "exclusive" in the amended form of section 29, did not purport to exclude the states from the exercise of any power not actually conferred upon the Secretary. *United States* v. *Hastings*, 296 U. S. 188, 199.

As in the case of respondent's argument on the matter of conflicting rate regulation, already discussed, the respondent's argument on the point under present consideration is built upon a hypothetical case of the most imaginative character. It actually requires that there be a coincidence of five assumptions in order to produce a "conflict" between federal and state control, indicating the lengths to which respondents were forced to go in order to make out a case. What has heretofore been said in this brief, respecting a similar attempt to establish "conflict" in the matter of rate regulation, and the *Allen-Bradley* and *Terminal R. Association* cases there cited, are equally applicable here. What is said in the next section of this

brief, regarding the policy and objectives of the federal act, still further establishes the invalidity of respondents' argument.

The Rice complaint asks for investigation and regulation of the respondents' contracts with affiliates and other utilities, and of the respondents' security issues. The state commission has express statutory authority to do this. The Secretary does not. It is an understatement to say that conflict between the federal and state agencies as to these matters is "reconcilable" when, in fact, such conflict is non-existent.

Summary on the question of conflict between federal and state statutes.

As indicated at the beginning of this section of the brief, no attempt is made herein to discuss the question of conflict with reference to each and every provision of the Illinois statute invoked by Rice, since lack of conflict as to any single item of the complaint would call for reversal.

Accordingly, we have discussed the question of conflict with respect to those items of the Rice complaint which may be regarded as of foremost importance, namely, the items pertaining to unjust, unreasonable and discriminatory rates; discriminatory and preferential warehousing practices; grain dealing by a public warehouseman; supervision of contracts with affiliates and other public utilities, and supervision of issuance of securities.

It is submitted that, as to each of these matters, analysis of the federal act and regulations fails to disclose any basis for conflict. Respondents invite the Court to search for conflict not plainly apparent in the act itself, but found only in elaborate hypothetical cases purposely designed to produce that result. However, the Court has already indicated, in another warehouse case only recently decided, the hesitancy which it has, in cases of this character, to look beyond the actual words of the statute. Said the Court, in *Davies Warehouse Co.* v. *Bowles, supra*, page 152:

"... Where Congress has not clearly indicated a purpose to precipitate conflict, we should be reluctant to do so by decision ..."

III.

The Illinois Statutes Regulating Warehouses Do Not Infringe the Policy of the United States Warehouse Act.

In the foregoing section of this brief it has been shown that at least as to several provisions of the Illinois Constitution and statutes invoked by Rice, there is no irreconcilable conflict with the particular provisions of the United States Warehouse Act.

But it is contended that, even where there is no direct conflict of particular provisions, if the state statutes "plainly and palpably" infringe the policy of the United States Warehouse Act, to use the language of *Southern Pacific Co.* v. *Arizona, supra,* supersedure may nevertheless occur. Conceding the correctness of this view, it is submitted that no infringement of Congressional policy can be shown in this case.

If the United States Warehouse Act, although not occupying the whole field of warehouse regulation, manifests the plain intent of Congress that the unoccupied portion of the field should remain unregulated, then the Illinois statutes, operating in the federally-unoccupied field, could be said to infringe the policy of the federal act.

To determine whether Congress had any such intent it will be necessary to examine the federal act and its 1931 amendment in some detail. But at the outset it should be borne in mind that, as a general rule, the failure of Congress to occupy the entire field is not to be taken as an intention to require that the unoccupied portion remain unregulated, and so to preclude all state authority.

No better illustration of this principle can be found than the situation dealt with in *Kelly* v. *Washington*, 302 U. S. 1. There the federal government had provided comprehensive and detailed regulation of steam vessels, including the in-

spection of hulls and machinery. But with respect to motor-driven tugs, federal regulation was much more limited and made no provision for such inspection. The question was whether the federal statutes are to be construed as implying a prohibition of inspection by state authorities of hulls and machinery of motor-driven tugs operating in interstate and intrastate commerce in navigable waters adjacent to the State of Washington.

Holding that no supersedure is to be implied in a case of this kind, this Court said:

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. Minnesota Rate Cases (Simpson v. Shepard) . . . States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police-power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently staid together.'" (page 9)

The *Kelly* v. *Washington* opinion then illustrates the principle announced above, by referring to several decisions where State regulatory statutes had been upheld, although federal control existed in the same field. The cases cited by the Court[6] happened to involve the State statutes

[6] *Reid* v. *Colorado*, 187 U. S. 137; *Savage* v. *Jones*, 225 U. S. 501; *Mintz* v. *Baldwin*, 289 U. S. 346.

designed to safeguard the public health. But, indicating that the principle is not at all limited to cases of this type, the Court said:

> "The application of the principle is strongly fortified where the State exercises its power to protect the lives and health of its people. But the principle is not limited to cases of that description. It extends to exertions of state power directed to more general purposes. Thus it was applied in sustaining the order of a state commission requiring interstate carriers to construct a union passenger station as against the contention that Congress had occupied the field—in view of the broad sweep of the Act conferring authority upon the Interstate (Commerce) Commission to deal with the operation of interstate railroads—as it was found that Congress had not authorized the Commission to meet the public need in the particular matter in question. Atchison, T. & S. F. R. Co. v. Railroad Commission, . . . (283 U. S. 391) . . . ." (page 13)

The federal act as originally enacted, was not intended to supersede all state regulation.

It is not understood that respondents contend, or the Court below held, that the United States Warehouse Act, as originally enacted, operated to supersede state authority, in view of the express reservation of state authority contained in section 29 of the original act. Rather, it is their view that the 1931 amendment of that section, by withdrawing that reservation, and inserting language designed to safeguard federal authority, changed the situation and brought about complete supersedure. The merits of this view cannot be appraised without a full understanding of the general scope of the federal act. It is therefore necessary, even though there be no controversy as to supersedure under the original form of the act, to thoroughly analyze the purposes and objectives of the original act.

Examination of the general scope and objectives of the United States Warehouse Act, as enacted in 1916, reveals no Congressional intent to effect supersedure of all state

warehouse regulation. The purpose of Congress at that time was to make it possible, through a federal system of warehouse receipts, to utilize stored agricultural products as a sound, nationally recognized source of credit. The act contains every necessary provision to accomplish this result. It contains nothing which is irrelevant to that objective.

Of the thirty sections of the act, ten contain express provisions relating to warehouse receipts.[7] The machinery set up to assure the soundness of such receipts consists principally of a system of licensing warehouses and persons engaged in classifying, grading, or weighing products stored in licensed warehouses. To assure the effectiveness of the licensing system and the soundness of the warehouse receipts issued by licensees, the act specifically provided for:

(1) The investigation of warehousing practices generally; inspection of warehouses operated by applicants for licenses and by licensees; determination of the suitability of warehouses for storage of agricultural products; classification of warehouses; and prescription of the duties of licensed warehousemen with respect to care and responsibility for agricultural products stored therein. (Sections 3, 24)

(2) The issuance of licenses and the term and renewal thereof. (Sections 4, 5, 9, 11) The suspension and revocation of licenses, for violation or failure to comply with the statute or rules and regulations, or upon the ground that unreasonable or exorbitant charges have been made for services rendered. (Sections 12, 25.)

(3) The filing of bonds, action on bonds and designation of bonded warehouses. (Sections 8, 25)

(4) The duty of licensed warehousemen to receive agricultural products for storage, without making any discrimination between persons desiring to avail themselves of warehouse facilities. (Section 13) The inspection of stored products, the establishment of stand-

[7] Sections 2, 9, 16, 17, 18, 20, 21, 22, 23, 30.

ards for agricultural products, and the mingling of products stored. (Sections 15, 16, 19) The assessment of inspection and license fees, and disposition of moneys. (Section 10) The application of the act and the rules and regulations, to all deposits of agriculture products in licensed warehouses. (Section 14)

(5) The issuance of warehouse receipts, the contents thereof, cancellation of receipts, and records of receipts. (Sections 17-20, 22, 23)

(6) The condition of delivery of stored products and records of products stored. (Sections 21, 23) The publication of findings as to non-compliance by licensed warehousemen; publication of the results of general investigations; and publication of lists of licensed warehousemen. (Section 26) The examination of books, records, papers, and accounts of licensed warehousemen. (Section 27)

(7) The promulgation of rules and regulations.

(8) Cooperation with State authorities, and construction of act so as not to impair State laws. (Section 29—later amended, as hereinafter noted)

(9) Punishment for violations and reimbursement for conversion. (Section 30)

(10) General provisions, such as title of act (Section 1); definitions (Section 2); employment of assistance (Section 31); severability clause (Section 32); and reserving the right to amend (Section 33).

It will be observed that each and every provision summarized above is pointed solely to the achievement of a workable federal warehouse receipt system—and to nothing else. To make it possible to control the issuance of this class of receipts, a licensing system is imperative. To assure the integrity of the receipts, provision is made for inspection, bonding, records and penalties. To limit the benefits of the act to those who are equitably entitled thereto, the privilege of being a licensee is confined to those who charge reasonable rates, and a duty is placed on such persons to receive grain for storage without discrimination.

That the United States Warehouse Act, as it was enacted in 1916, was strictly a warehouse receipt and licensing act is also apparent, when attention is called to the usual and important features or general regulatory statutes which are not to be found in this federal act or in the rules and regulations promulgated thereunder. For example, the Illinois Public Utility Act, which Rice sought to invoke in this case, contains the following provisions considered vital to any general regulatory act, yet wholly missing from the United States Warehouse Act:

(1) Providing that all rates and charges shall be just and reasonable, and prohibiting, and declaring unlawful, every unjust or unreasonable rate or charge. (Section 32) (Comparison between the rate provisions of the Illinois statute, and those of the federal act is fully discussed in the preceding section of this brief.)

(2) Providing for suspension and investigation of rate changes. (Section 36)

(3) Prohibiting rebates and refunds. (Sections 37, 39)

(4) Forbidding rate discriminations. (Sections 37, 38)

(5) Providing for the prescription of rates by the regulatory agency. (Section 41)

(6) Reparations for overcharges. (Section 76)

(7) Supervision of contracts between public utilities, of control of one utility by another, and of sale or encumbrance of utility property. (Section 27)

(8) Regulation of the issuance of securities. (Sections 21, 23)

(9) Supervision of mergers, consolidations and reorganizations. (Section 22)

(10) Control over the payment of dividends. (Section 27a)

(11) Authority of the regulatory commission to ascertain the value of the utility property. (Section 30)

(12) Supervision over additions, improvements, new construction. (Sections 50, 56)

(13) Procedural powers, such as provision for investigation and hearing (Sections 64, 69); complaints and notice (Section 68); attendance of witnesses and depositions (Section 66); issuance of order, record, and judicial review (Section 69). (Note: Section 24 of the federal act provides briefly for hearings in cases of non-compliance by warehousemen, but limiting the Secretary of Agriculture to the right to "publish his findings." Section 25 also provides for hearings prior to revocation or suspension of licenses.)

Not all state regulatory acts applicable to warehouses contain all the provisions, absent from the federal act, which are listed immediately above. But the majority of them contain most of these provisions, so that it is fair to say that an act which omits all or most of them cannot be classified as a general warehouse regulatory act.

It is therefore clear that, viewing only the broad scope and indicated objectives of the United States Warehouse Act, as originally enacted, it cannot be inferred that Congress intended to occupy the whole field of warehouse regulation. Examination of the individual sections of that act yields further proof that total occupancy of the field was not intended, and that continued administration of state warehouse regulatory statutes was anticipated.

For example, Section 18 provides that "unless otherwise required by the law of the state in which the warehouse is located" a warehouse receipt issued for other then fungible products, may omit compliance with sub-paragraph (g) of that section. Likewise, Section 20, relating to issuance of further receipts, calls for "compliance with the laws of any state applicable thereto . . . " It is difficult to see how these provisions could be deemed compatible with a Congressional intention to wholly preempt the field of warehouse regulation.

In view of the general scope of the act, and the significance to be attached to the individual sections referred to

above, no legislative declaration was needed to protect the states from supersedure as to those areas of warehouse regulation where no conflict with federal regulation or policy occurred. The states were adequately safeguarded, as to these areas, by the general principle of statutory construction that, in the absence of express language, the intention of Congress to supersede state authority will be inferred only where there is an irreconcilable conflict or direct and positive repugnance between the federal and state legislation.

But Congress apparently desired to go beyond this, by expressly reserving state authority even in those areas where there would be direct conflict between federal and state action. So Congress provided, in the original form of Section 29 that:

> ". . . nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen. . ."

This abnormal reservation of state authority was withdrawn in 1931, when Section 29 was amended, as will be later noted. Accordingly we do not rely upon this provision as affording any present safeguard to the states. We point out, however, that since the provision was not needed to safeguard state authority in the unoccupied portion of the field, and was not designed for that purpose, its later repeal cannot be taken as an expression of Congressional intent to supersede the states in that unoccupied field.

Section 29 of the original act contains another provision which furnishes the clinching proof that the United States Warehouse Act, as originally enacted, was not intended to preempt the field. This provision reads as follows:

> ". . . the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and

through such cooperation to secure the enforcement of the provisions of this Act. . ."

As more fully shown at a later point in this brief, this provision constitutes direct recognition that both the federal government and the states may regulate the same warehouseman—a federally licensed warehouseman.

If there could be any doubt that the original act was intended only as a warehouse receipt act, and not as a general regulatory statute, that doubt would be resolved by reference to the legislative history. The House Report favorably reporting H. R. 9419—64th Congress, which became the United States Warehouse Act, contains this explicit statement of the purpose of the act:

> "The essential purpose of this bill is to provide machinery by which farm products may be brought into the most intimate contact with the commercial and investment banking world. Farm products of staple and nonperishable character, such as cotton, grain, wool, tobacco, and the like, undoubtedly furnish the very best security for procuring credit, for these products are the most accurate and unvarying barometers of the country's prosperity as well as indispensable factors in its physical existence and activity. Notwithstanding this fact, collateral based upon farm products affords only a most indifferent basis of credit, being rated, as it were, as of secondary strength. . . . We are seeking in this bill to put farm products in such position that they may assert their full value and strength, and this can be done only through a system which assures to the investor their quality, quantity, and safekeeping and at the same time affords him an investment which is readily negotiable." (H. Rept. 60, 64th Cong., 1st Sess., Jan. 21, 1916, page 2)

Regarding the intention of Congress, in 1916, to safeguard state jurisdiction, Congressman Lever made this statement on the floor of the House during consideration of H. R. 9419:

> "I wish also to point out very distinctly that the system proposed here can not interfere with any sys-

tem organized under State or local authority. I recognize the value of State and local systems of warehousing farm products and I would not in the least hamper them. I believe emphatically that there is ample work for both systems to do and that the two will quickly harmonize their efforts and aims." (Cong. Rec. Vol. 53, pt. 6, April 11, 1916, page 5925)

It is especially important to observe that, in the legislative history of the original act, and also of the 1931 amendment, as will presently be shown, no mention is made of the need to protect the public from unjust, unreasonable, or discriminatory storage rates; prejudicial and preferential warehousing practices; or any of the other undesirable results which develop when a public utility industry goes unregulated. Patently, Congress was not thinking of these things nor directing its legislation to those ends, but rather to the single subject repeated over and over again—establishing warehouse receipts which will have collateral value.

From what has been said above we respectfully submit that, entirely apart from the provision of section 29 expressly reserving all state jurisdiction, the original form of the United States Warehouse Act was not intended, and did not operate, to preclude all State regulation of federally licensed warehousemen. We come, then, to the 1931 amendment, chiefly relied upon by respondents as evidencing a Congressional intention to effectuate complete supersedure.

The 1931 amendment did not change the basic intention of Congress but was only meant to strengthen federal administration in the limited field covered by the original act.

Aside from a number of minor changes of no relevancy here, the 1931 amendment revised only sections 6 and 29 of the act. The most important of these is the revision of section 29. In its original form, as indicated above, this section reads as follows:

"*. . . nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen* . . . but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act. . . ."

The 1931 amendment changed this to read:

"In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; *but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect. . . ."

It will be observed that this revision of section 29 leaves the provision relative to cooperation with state officials substantially as it was before. But the provision of the original act expressly reserving state authority, shown in italics, has been replaced with a provision, also shown in italics, stating that the power, jurisdiction, and authority conferred upon the Secretary under the chapter "shall be exclusive."

It has already been shown that the omitted provision was not needed to safeguard state jurisdiction as to those phases of warehouse regulation not expressly covered by the federal act. It was designed, rather, to extend the reservation of state authority to cases of actual conflict. It developed as will later be shown by reference to the legislative history, that this unusual extension of state authority interfered with proper administration of the federal act. Congress accordingly removed this provision from the act and provided that the power, jurisdiction, and authority conferred upon the Secretary "under this chapter (the entire United States Warehouse Act) shall be exclusive."

The 1931 amendment did not confer upon the Secretary, any additional "power, jurisdiction, and authority." The general provisions of the act and the specification of the Secretary's powers and duties remained what they had always been since the original enactment in 1916. Hence the federal "power, jurisdiction, and authority" which became "exclusive," under the 1931 amendment, was the limited power, restricted jurisdiction, and circumscribed authority which had always been exercised. The act was still a warehouse receipt act—the Secretary was still without any "power, jurisdiction, or authority" in the general field of warehouse regulation.

How, then, can it be said that the 1931 amendment of section 29 operated to preempt the entire field of regulation as to warehousemen holding federal licenses?

When it is said that the Secretary has "exclusive" power in a certain field, that implies not only that others are precluded from exercising power in that field, but that the Secretary *does have* power in that field. But the Secretary has never been given any power, jurisdiction, or authority with respect to 13 specific features of the Illinois Public Utility Act, as heretofore indicated.

Accordingly, as to those 13 features, the Secretary's power, being non-existent is certainly not "exclusive," and the term "exclusive" cannot, therefore, operate to exclude state jurisdiction as to those matters.

That Congress contemplated continuance of state regulation also seems evident from the fact that section 29, as amended, still contains the provision for cooperation:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of *State laws relating to warehouses*. . . ."

Obviously the only area where cooperation would have any bearing upon the purposes and objectives of the federal act is with respect to regulation of federally-licensed warehouses. As to warehouses not licensed under the fed-

eral law, the Secretary has no powers or duties, and hence no purpose in cooperating with state officials. From this it appears clear that Congress assumed that non-conflicting state regulation of federally-licensed warehouses would continue. To make certain that the dual regulation works harmoniously and effectively, and to advance the general objectives of the federal act with respect to such warehousemen, the cooperation provision was continued in effect.

As this Court recently said, in *Union Brokerage Company* v. *Jensen*; 322 U. S. 202, holding that a state may require a federally-licensed customhouse broker to obtain a license as a foreign corporation:

> ". . . Where the Government has provided for collaboration the courts should not find conflict. See Savage v. Jones, 225 U. S. 501, . . . and Kelly v. Washington, 302 U. S. 1. . . ." (page 209).

Likewise in *Townsend* v. *Yeomans*, 301 U. S. 441, the Court indicated the significance it attaches to provisions calling for cooperation with state officials when it said, referring to the Federal Tobacco Inspection Act:

> ". . . Instead of frustrating the operation of such state laws (Georgia law fixing maximum charges for handling and selling leaf tobacco), the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States in protecting the farmers' interests. In this view we find no ground for the contention that Congress has taken possession of the field of regulation to the exclusion of state laws which do not conflict with its own requirements." (page 454).

The legislative history of the 1931 amendment of section 29 reveals that the limited purpose of the revision was to eliminate federal subjection to state authority in cases of actual conflict. It also furnishes additional evidence that the prime purpose of the entire act was not general regulation of warehouses, but to convert farm products into col-

lateral value through a system of federal warehouse receipts.

The House Committee, in favorably reporting H. R. 7—71st Congress, containing the 1931 amendments, said:

> "Under section 29 of the law as at present, if the Federal act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain. Bankers generally have recognized the worthy purposes of the warehouse act, but when they are approached to loan large amounts they view section 29 of the present law with considerable misgiving. To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal Warehouse Act stand on its own bottom." (House Report 4—71st Cong., 1st Sess., May 1, 1929, page 4)

Continuing, the House Report says:

> "It is believed that the amendments embodied in this bill will give the warehouse receipts issued under the Federal warehouse act such collateral value as to command the confidence of all bankers and will place this law on a firm foundation. . . . " (House Report 4, page 5)

The Senate Committee, favorably reporting the same bill, said:

> ". . . Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom. It does not change the permissive feature of the Federal act. No ware-

houseman is obliged to operate under the Federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. The amendment will clarify and remove many uncertainties from the credit mans viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation; a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency." (Senate Report 1775—71st Congress, 3rd Sess., Feb. 17, 1931, page 2)

It will be noted that both of these committee reports refer to the "conflicts" with state law—not to state regulation in the area untouched by the federal act. Where actual conflicts develop they had been resolved, in the past, by making the federal act give way to state authority. But, as explained in the House report, "This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain." So the amendment was designed to remedy this defect by making the federal act supreme in case of conflicts, but did not operate to extend federal jurisdiction to, or exclude state jurisdiction within, the general field of warehouse regulation not directly related to the federal warehouse receipt and licensing system.

The limited purpose and effect of the 1931 amendment, as shown by these committee reports, is further demonstrated by the statement made by Congressman Clark of New York, floor manager on the bill, when the 1931 amendment reached the House. Mr. Clark said:

> "The only section of that bill that should raise any question at all in any member's mind is the Sec. 29 amendment. Under the present law, if the Federal act in any way conflicts with State laws, the Federal act becomes subservient to the State law in so far as there is conflict. The result is that the Federal law can be negatived by State legislation. This condition has put a severe limitation at times on Federal warehouse receipts attaining that degree of usefulness that they should have and that the Congress intended that they should have for collateral purposes. In fact, this very limitation can defeat the very intent of Congress and render worthless as collateral the receipts issued under the law. Any clause or phrase in the law which raises a doubt in the banker's mind about the receipts cast a cloud on their collateral value. *As the one big purpose of the Warehouse Act was and is to convert the farm products into collateral value*, and as this act during the past ten years has proved its value to the farmer and his cooperative associations, we should not hesitate to perfect it and make the warehouse receipts issued thereunder above suspicion." (Vol. 72, Cong. Rec. Pt. 8, p. 8530, H. R. 7.)

This 1931 amendment of section 29 has been considered by the Courts in two cases presently to be noted.

The Supreme Court of South Dakota, in *In Re Farmers Cooperative Assn.*, 8 N. W. 2d 557, held that the United States Warehouse Act was designed to provide for the licensing of warehouses for the storage of agricultural products intended for interstate shipment, as well as those actually in course of such shipment, and that a warehouseman, licensed under that Act was exempt from the requirement of a state law that he obtain a state license. That case involved only the question whether the warehouseman must obtain two licenses. The question whether the United

States Warehouse Act precludes the exercise of state power in the general field of warehouse regulation was not discussed.

In the course of its opinion the South Dakota court considered section 29, as amended, and reached this conclusion:

> "We interpret this as a clear grant of discretionary power to the Secretary of Agriculture, to achieve the congressional aim either through cooperation with state officials in promoting state regulation, or by direct federal control. When the latter course is followed both by reason of the terms of the act, and the paramount nature of federal power, the federal control displaces state control." (Page 562)

That the South Dakota court misconstrued the concluding words of section 29 of the United States Warehouse Act, in holding that those words operate to vest in the Secretary jurisdiction exclusive of all state jurisdiction whatsoever over warehouses licensed under the act, seems plain from the decision of this Court, in *United States* v. *Hastings*, 296 U. S. 188, decided in 1935, dealing with those very concluding words of that section.

In the *Hastings* case, the question was involved whether the provisions of section 30 of the act, making it a penal offense to remove "from a licensed warehouse" contrary to the provisions of the act, "any agricultural product stored. . . . for which licensed receipts have been or are to be issued," were applicable to a theft from a licensed warehouse of agricultural products stored therein, and covered by a receipt issued in the form required by the Act, when it was not shown that the agricultural products stolen were stored for interstate commerce. The Court held the provisions of section 30 inapplicable in such case.

Considering the effect of the words in section 29, "the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license," the opinion, written by Chief Justice Hughes, states:

". . . . The Act is not limited to one section of the country, or to particular market conditions, but applies generally to warehouses for these varied commodities. . . . And *Congress could not fail to have in mind that there were warehouses in many States, operating under state laws* and serving local demands in intrastate transactions; receiving for storage and issuing receipts for agricultural products in connection with enterprises and trade that are entirely local.

"It would need stronger evidence than this Act affords to justify the conclusion that Congress intended that warehousemen, in taking advantage of the federal statute and in issuing warehouse receipts as required by its terms, should submit to federal control the deposit of products and the issue of warehouse receipts in the course of their local business where the products were not stored for interstate or foreign commerce. Despite the broad language of certain sections of the Act, we think that (aside from places within the exclusive jurisdiction of the United States) the limitation to storage for interstate or foreign commerce is dominant. . . . The amendment of 1931 with respect to conflict with the operation of state laws does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, *it has relation to the authority conferred by the Act*, and the definition in the original act of the warehouses which may be licensed and the provision of section 259 (section 17) as to the products for which warehouse receipts are to be issued, were left unchanged by the amendment." (page 198).

To the extent that *the Act gives authority to the Secretary*, it was the purpose of the 1931 amendment to make the jurisdiction of the Secretary exclusive, but, as to those matters concerning which the Secretary has *no* authority, the amendment, as the *Hastings* decision points out, leaves state authority unaffected.

The *Hastings* case dealt only with the question of whether the act gave the Secretary any authority with respect to intrastate commerce, and concluded that it did not. Because of this, the Court below concluded that the case has

no bearing here. But this overlooks the fact that the reasoning of the *Hastings* opinion is as applicable to the disputed areas of regulation involved in the instant case as to the disputed area (interstate versus intrastate commerce) involved in the proceeding. If, as Chief Justice Hughes points out, the provision that the Secretary's power shall be exclusive, "has relation to the authority conferred by the Act," then it is obvious that it has no relation to the numerous provisions of the Illinois Public Utility Act not touched upon by the federal act or regulations thereunder, as listed above.

In addition to the amendment of section 29, the amendatory act passed in 1931, revised section 6 of the United States Warehouse Act, relating to the filing of bonds. In its original form, section 6 required that federal licensees give a bond "to secure the faithful performance of his obligations as a warehouseman *under the laws of the state, district or territory* in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder. . . ." The 1931 amendment, eliminated the requirement that the bond be conditioned upon compliance with the laws of the state, district or territory in which the warehouse was conducting business, and left only that provision requiring the bond to be conditioned upon compliance with the Federal act and federal regulations thereunder.

Respondents contended, in the Court below, that this revision of section 6 "is consistent only with the purpose and design of Congress to give effect to the amendment to Section 29, whereby exclusive control over federally licensed warehousemen was vested in the United States Agency."

But the action of Congress, as revealed by the House and Senate reports, was not taken in contemplation of total supersedure of state authority, as respondent implies. The exact reverse of this is true, for this change was actually made in contemplation that *state laws would continue in effect* and might be the cause of exhausting the federal

bond to take care of claims under the state law. Whereas Congress could have expressly exempted warehousemen from liability under state law, it chose, instead, to recognize continued application of the state law but, for reasons stated in the Committee Report, to relieve the federally-filed bond from liability under such state statutes.

> "The next amendment eliminates from section 6 of the present act the clause which provides that the bond shall secure the faithful performance of the warehouseman's obligations as defined by State laws. *Since the act does not give the department jurisdiction to enforce State laws, it is obviously unfair that a bond should be exacted of a warehouseman to satisfy State laws.* Such a requirement subjects the bond to greater exposure of liability and naturally such increased exposure is reflected in the rates charged for bond premiums. Moreover, *if the bond is available under State acts* this may result in taking away from Federal receipts some of the very best security that the Federal act contemplates shall be available for their protection. Again this amendment to section 6 naturally follows the amendment suggested to section 20." (Senate Report 1775—71st Cong., 3rd Sess., page 2)

The point which respondent here tries to make is also obviously met by the fact that the 1931 amendment did not remove from the act two other references to state laws, contained in sections 18 and 20, as heretofore noted.

Summary on the general scope and policy of the federal act.

The limited nature of the United States Warehouse Act has been well summarized in these words by Professor John H. Frederick, Professor of Transportation and Industry, The University of Texas:

> "The United States Warehouse Act, which became a law on August 16, 1916, is primarily a licensing device. It provides for the licensing and the bonding of public warehouses storing certain agricultural products under

conditions intended to establish the integrity of their warehouse receipts and to make these receipts generally acceptable as security for loans." (Public Warehousing, John H. Frederick, The Ronald Press Company, 1940, page 228)

This Court has heretofore recognized that the United States Warehouse Act is restricted in its application. This is evidenced not only by what the Court said in the *Hastings* case, supra, but also by what it said in *Townsend* v. *Yeomans*, 301 U. S. 441, sustaining a Georgia statute fixing maximum charges for handling and selling leaf tobacco. Holding that this state statute had not been superseded by the Federal Tobacco Inspection Act, the Court said:

> "Even where the Federal Government has intervened, as in the United States Warehousing Act of August 11, 1916, 7 U. S. C. A. Chap. 10, in providing for licenses for warehouses where agricultural products are 'stored for interstate or foreign commerce,' we held that the license did not convert the warehouseman into an instrumentality of the Federal Government, and, while by means of the licensing provisions *a measure of control* over those engaged in the business was secured to the national government, still the license did not confer upon the warehouseman immunity from state taxation. Federal Compress & Warehouse Co. v. McLean, 291 U. S. 17, 22, 23. . . ." (page 457)

The *Federal Compress* case, referred to in the *Townsend* decision, was decided prior to the 1931 amendment. But it has already been shown that this amendment did not enlarge the Secretary's regulatory jurisdiction in any respect. Consequently, the statement that the federal act affords only "a measure of control," is as valid today as when the *Federal Compress* decision was rendered.

In view of the limited scope of the federal act, the State regulatory statutes cannot be said to infringe upon the policy of Congress, and the two can consistently stand together. As was said by this Court, in *Allen-Bradley Local*

v. *Wisconsin E. Rel. Bd.*, supra, in upholding a state order made under a state employment peace act as not repugnant to the provisions of the National Labor Relations Act:

> ". . . Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. See Sinnot v. Davenport, 22 How. (US) 227, 243. . ." (page 751)

And finally, in considering this whole question of state infringement upon a policy of Congress, great weight must be given to the fact that we are here dealing with a long-exercised function of state government. That this factor is entitled to evaluation in deciding the question of supersedure is plainly indicated by what was said in *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144. It was there said:

> ". . . It is a much more serious thing to adopt a rule of construction, as we are asked to do here, which precludes the execution of state laws by state authority in a matter normally within state power. . . ." (page 155)

In view of the foregoing discussion we submit that the United States Warehouse Act, as it exists today, is operative in a comparatively narrow field; that it was not intended, and is not administered as a general regulatory act; that it manifests no Congressional intent that federally-licensed warehousemen should escape general state regulation as to matters not expressly covered by the federal act; and that accordingly the state regulatory statutes here in question do not "plainly and palpably" infringe the policy of the United States Warehouse Act.

IV.

Supreme Court Cases, Holding that Supersedure Has Occurred, Distinguished.

Most Court decisions favoring federal preemption involves matters which, unlike warehouse regulation, have been customarily controlled at the national level. Where preemption has been found in a field theretofore open to state regulation, this has been due to a conflict of precise regulations or a clash between the policy of the federal and state acts, both of which, is is submitted, are lacking in the instant case.

Thus the early case of *Prigg* v. *Commonwealth of Pennsylvania*, 41 U. S. (16 Pet.) 539, relied upon so heavily by respondents in the Court below, involved the validity of an 1826 Pennsylvania criminal statute under which Edward Prigg was convicted for seizing a fugitive slave and returning her to Maryland. The Court, in setting aside the conviction, pointed to Article IV, Section 2 of the Constitution, relating to fugitive slaves, and to the Act of Congress of the 12th of February, 1793, respecting fugitives from justice and persons escaping from the service of their masters.

Here was a matter expressly dealt with in the Constitution and concerning which Congress had acted in 1793, 31 years before the Pennsylvania statute was enacted. There was no tradition of state control in this field—on the contrary, the federal government had assumed control from the beginning. In this setting the Court concluded that the states were without power to complement federal legislation.

Respondents also relied, in the Court below, on a series of railroad cases as supporting their contention that the states could not supplement federal regulation established by Congress in the exercise of its powers under the Commerce Clause. These cases are: *Southern Ry. Co.* v. *R. R. Commission of Indiana*, 236 U. S. 439; *Napier* v. *Atlantic*

Coast Line R. R. Co., 272 U. S. 605; *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147; and *Charleston and Western Car Railway Co.* v. *Varnville Co.*, 237 U. S. 597.

Where the case involves railroad regulation, the Courts have usually adopted a strict view of state jurisdiction, due to the nature of railroads as instrumentalities of interstate commerce. Consequently, in such cases, it has been easier for the Court to find supersedure than in other regulatory fields more closely identified with the local public interest.

But, actually, the facts in these railroad cases were such that supersedure was called for regardless of the character of the case, since an actual conflict between federal and state regulations was shown to exist, or the delegation of federal power to a federal regulatory agency was sufficiently broad to indicate an intent to accomplish complete supersedure.

Thus, in *Southern Ry. Co.* v. *R. R. Commission of Indiana*, supra, the Indiana statute required railroads to place grab irons and hand holds on the sides or ends of every car, under a penalty of $100 fine. The federal Safety Appliance Act likewise imposed penalties for failing to equip cars with hand holds. Here was a clear duplication on a precise detail of regulation, and necessarily the state regulation had to give way.

Napier v. *Atlantic Coast Line R. R. Co.*, supra, involved the question of an unexercised discretionary power given by Congress to a federal official as a means of regulating interstate commerce, where the full exercise of his authority would conflict with an assertion of the state power. The Boiler Inspection Act there in question did not deal expressly with automatic doors to locomotive fire boxes, or with locomotive cab curtains, which were the subject matter of the Georgia and Wisconsin regulations there in question. But, in view of the broad delegation of power to the Commission, Congress was held to have intended a preemption of the field. As stated by Chief Justice Stone

in his dissenting opinion in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 171, the question in the *Napier* case was:

> ". . . whether the failure of the federal official to exercise his full power is in effect a controlling administrative ruling that no further regulation by either federal or state government is needful." (page 176)

Needless to say, no such question as this is involved in the instant case.

The third railroad case cited by respondent is *New York Central R. Co.* v. *Winfield*, 244 U. S. 147. There a railroad employee sought to recover from the company for injuries received in an accident not involving negligence by the employer. Compensation was sought under a New York Workmen's Compensation Law which permits recovery in such cases. The Court held that, with respect to railroad employees, this state law was superseded by the Federal Employers' Liability Act. The latter Act provided for employer-responsibility in the event of negligence, but not where negligence is not shown.

The Court concluded that failure of the federal Act to provide for relief in cases not involving negligence indicated an intention of Congress that compensation should not be exacted in such cases. Hence a state statute providing for compensation in such cases would be in direct conflict with the policy of the federal legislation. In reaching this conclusion the Court placed emphasis upon the national characteristics of railroad operations, and the resulting special need for uniformity, saying:

> ". . . whether and in what circumstances railroad companies engaging in interstate commerce shall be required to compensate their employees in such commerce for injuries sustained therein are matters in which the nation as a whole is interested, and there are weighty considerations why the controlling law should be uniform and not change at every state line. . . . It was largely in recognition of this that the Employers' Liability Act was enacted by Congress. . . . It was drafted and passed shortly following a message from

> the President advocating an adequate national law covering all such injuries, and leaving to the action of the several states only the injuries occurring in intrastate employment. . . ." (page 149)

In the instant case, unlike the *Winfield* case, there is no conflict whatever between state and federal policy; the subject of regulation, warehousing, is not primarily a matter of national interest; and the legislative history, as heretofore noted, indicates no intention of securing national uniformity in the whole field of warehouse regulation.

The final railroad case cited by respondents, in its brief to the Court below, is *Charleston & W. C. Ry Co.* v. *Varnville Furniture Co.*, 237 U. S. 597. There the Court held invalid a South Carolina statute permitting recovery for loss against an interstate carrier even though there has been no showing that the loss happened while the goods were in the carrier's possession, or within the state, or to have been caused by it. The Court held that the state statute "overlaps the Federal Act (Carmack amendment, Act of June 29, 1906, chap. 3591, 34 Stat. 584, 593) in respect of the subjects, the grounds, and the extent of liability for loss." (page 603) Thus, again, supersedure was based upon conflict and repugnance between the federal and state statutes.

In spite of the national character of railroad transportation, however, not all such cases have been decided adversely to the states, the trend in recent years appearing to be against a finding of supersedure. See:

> *Southern Pacific* v. *Arizona*, supra
> *Terminal R. R. Assn.* v. *Brotherhood of Railroad Trainmen*, supra
> *A. T. & S. F. R. Co.* v. *R. Com.*, 283 U. S. 380

As further illustrating the fact that most Court decisions favoring federal preemption have been rendered in cases where the subject of regulation has been customarily one for national control, reference is made to *Hines* v. *David-*

owitz, 312 U. S. 52, also relied upon by respondent. This case held that the Federal Alien Registration Act of 1940 precluded the enforcement of the Pennsylvania Alien Registration Act of 1939. Pointing to the primary national interest in the subject-matter, the Court said:

> "That the supremacy of the national power in the general field of foreign affairs, including power over immigration, naturalization and deportation, is made clear by the Constitution, was pointed out by the authors of The Federalist in 1787, and has since been given continuous recognition by this Court. . ." (page 62)

It is obvious that supersedure could be established more readily in a case involving international relations, concerning which the national government has always had full and exclusive responsibility, than in a case involving warehousing regulation. As this Court said, in *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd.*, supra, sustaining a Wisconsin employment peace act as not repugnant to the National Labor Relations Act:

> ". . . In the Hines Case a federal system of alien registration was held to supersede a state system of registration. But there we were dealing with a problem which had an impact on the general field of foreign relations. . . . Therefore we were more ready to conclude that a federal act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways. . . ." (page 749)

The Court decision upon which respondents apparently place chief reliance is *Cloverleaf Butter Co.* v. *Patterson*, supra. Here it was held that federal regulation of the production of renovated butter by a statute taxing such butter and its manufacture; prescribing the conditions under which it is to be made, making provision for its inspection,

and giving power to confiscate the finished product, excludes state power to inspect, seize and detain packing stock butter (from which renovated butter is made) from a manufacturer, part of whose product is sold in interstate commerce.

While the subject-matter of the regulation involved in the *Cloverleaf* case is one which has long been dealt with by the states, the Court, viewing all the facts, concluded that the state regulation here was inconsistent with the regulatory policy declared by the federal statute. "Confiscation by the state of material in production," said the Court, "nullifies federal discretion over ingredients." (page 168)

No similar statement can accurately be made concerning the proposed Illinois regulation of warehouses in the instant case. There is no conflict in policy between the federal and state statutes, as heretofore shown in this brief; and no state regulation would have the effect of nullifying any federal discretion vested in the Secretary of Agriculture.

That the *Cloverleaf* case represents about the farthermost point the Court has indicated a willingness to go in finding supersedure is indicated by the fact that the case turned on a five to four decision and that the essence of the views expressed in the dissenting opinion of the Chief Justice (and much of the exact language) became the majority opinion of the Court in *Penn Dairies* v. *Milk Control Com.*, supra, decided a year later. In this latter case, in holding against nullification of a state statute, the Court said:

> ". . . An unexpressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred and ought not to be implied where the legislative command, read in the light of its history, remains ambiguous. Considerations which lead us not to favor repeal of statutes by implication; United States v. Borden, 308 U. S. 188, 198, 199. . . . United States v. Jackson, 302 U. S. 628, 631, . . . Posadas v. National City Bank, 296 U. S. 497,

503-505, . . . should be at least as persuasive when the question is one of the nullification of state power by Congressional legislation." (page 275)

". . . Courts should guard against resolving these competing considerations of policy by imputing to Congress a decision which quite clearly it has not undertaken to make. Furthermore we should be slow to strike down legislation which the state concededly had power to enact, because of its asserted burden on the federal government. For the state is powerless to remove the ill effects of our decision, while the national government, which has the ultimate power, remains free to remove the burden." (page 275)

The latest Supreme Court decision cited by respondents, in their brief to the Court below, is *Hill* v. *Florida*, 325 U. S. 538. The Court held that a Florida statute requiring a license for business agents of labor unions and prescribing their qualifications, is invalid as to employees covered by the National Labor Relations Act.

There was no departure from the principle that supersedure occurs only where there is an "irreconcilable conflict." (See page 539 of opinion) Applying that principle, the Court found that section 4 of the Florida Act circumscribes the "full freedom" of choice which the federal act expressly guarantees. The Court in the *Hill* case also found that the penalty provisions in section 6 of the Florida Act, relating to licenses, "brings about a situation which is inconsistent with the federally protected process of collective bargaining." (page 543) On this the Court said:

"Section 6, as here applied, stands no better (than section 4). The requirement as to the filing of information and the payment of a $1.00 annual fee does not, in and of itself, conflict with the Federal Act. But for failure to comply, this union has been enjoined from functioning as a labor union. . . ." (page 543)

There are no guarantees in the United States Warehouse Act which would be in the slightest affected by the state

regulation here in question. As will be later shown, that Act was designed primarily to protect those who deal in warehouse receipts. The state regulation does not interfere with that purpose. Applying the exact rule announced in *Hill* v. *Florida*, there is here no "irreconcilable conflict between the federal and state warehouse acts."

CONCLUSION.

The effect of the decision by the Court below is to strike down every vestige of state regulatory authority, as it may be applied to federally licensed warehousemen. The state authority thus destroyed has been long and widely exercised by the states. The general public interest in preserving this state authority is obvious.

The federal act is neither intended nor administered as a substitute for comprehensive state regulation. It deals with the limited problem of warehouse receipts. Its legislative history is barren of any indication that Congress had general regulatory problems in mind or sought to preclude the states from dealing with such problems. No actual conflict is foreseeable under the issues of this particular case. The possibility of conflict at other times and in other cases is supported only by supposition built upon supposition. Continued exercise of state regulatory authority will interfere with the federal act in no substantial respect.

Measured by the strict tests of supersedure established by this Court, the facts of the case present no justification for this destruction of state authority. Evaluated in terms of the comparative national and local interests, the almost imperceptible and mostly imagined effect of state regulation upon proper administration of the United States Warehouse Act does not merit this blow to the general and local public interest now protected by the state.

The injunction does not give respondents relief from conflicting regulation, but sanctuary from all regulation.

The petition for the writ of certiorari should be granted.

Respectfully submitted,

FREDERICK G. HAMLEY,
JOHN E. BENTON,
Attorneys for National Association of Railroad and Utilities Commissioners,
7413 New Post Office Building,
Washington 25, D. C.

September 20, 1946.

FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 9 1946
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1946

No. 470

ILLINOIS COMMERCE COMMISSION, et al.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

BRIEF FILED ON BEHALF OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, AS AMICUS CURIAE, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

EVERETT C. McKEAGE,
RODERICK B. CASSIDY,
JOHN M. GREGORY,
H. F. WIGGINS,
BORIS H. LAKUSTA,
State Building, San Francisco 2, California,
Attorneys for the Railroad Commission of the State of California,
As Amicus Curiae.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Topical Index

	Page
Opinion Below	1
Preliminary Statement	1
Statement of the Case	2
Reasons for Granting the Writ	4
The Question Presented	7
Argument	7
I. Claim of supersedure of state authority by United States Warehouse Act	7
II. Construction of said act	8
Conclusion	15

Table of Authorities Cited

Cases	Page
Davies Warehouse Co. v. Bowles, 321 U. S. 144	14
In re Farmers Coop. Assn., 8 N. W. (2d) 557	15
Kelly v. Washington, 302 U. S. 1, 82 L. ed. 3	13
Munn v. Ilinois, 94 U. S. 113	5
Palmer v. Masachusets, 308 U. S. 79, 84 L. ed. 93	13
Simpson v. Shepard, 230 U. S. 352, 57 L. ed. 1511	13
United States v. Hastings, 296 U. S. 188	13

Miscellaneous

Commodity Exchange Act, 7 U.S.C. 1, et seq	3
Constitution of the United States, Art. I, Sec. 8, Par. 3	3
United States Warehouse Act:	
Section 2	9
Section 17	14
Section 29	12
Section 30	14

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1946

No. 470

ILLINOIS COMMERCE COMMISSION, et al.,
Petitioners,

vs.

GREAT LAKES ELEVATOR CORPORATION, et al.,
Respondents.

BRIEF FILED ON BEHALF OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, AS AMICUS CURIAE, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 156 Fed. (2d), page 33.

PRELIMINARY STATEMENT.

The Railroad Commission of the State of California, on whose behalf this *amicus curiae* brief is offered to be filed,

is an agency of the State Government of the State of California, existing under and by virtue of the provisions of the Constitution and laws of said State, and having jurisdiction over all public utilities, including warehouses and warehousemen, operating within said State.

STATEMENT OF THE CASE.

The respondents are engaged in the business of the public storage of grain for hire at Chicago, Illinois. Most of the grain stored by respondents is received from, or shipped to, states other than Illinois. (R. 59-77.) Respondents conduct their respective warehousing businesses under authority of licenses issued by the Secretary of Agriculture of the United States hereinafter called the Secretary, pursuant to the United States Warehouse Act,[1] and under a schedule of rates, charges and practices duly filed with the Secretary, as required by the Federal act.

Daniel F. Rice & Company (hereinafter called Rice), an Illinois partnership, is an owner, shipper and dealer in grain in the State of Illinois, and is, and for some years past has been, a customer of respondent warehousemen, storing grain in the elevators maintained by respondents and paying grain storage and warehousing charges thereon.

On July 28, 1944, Rice filed with the Commission a complaint against the respondents in this case, and the respondent (Board of Trade of the City of Chicago) in No. 471, October Term, 1946, alleging violations of the

---

[1]Tit. 7 U.S.C. 241-73.

Public Utility Act and the Illinois Grain Warehouse Act of the State of Illinois. In paragraph 13 of the Rice complaint it is charged that all or some of the respondents have violated the laws of the State of Illinois in the following particulars: charging unjust, unreasonable, and discriminatory rates; pursuing discriminatory practices; operating without a State license; failing to secure Commission approval of contracts and security issues; mixing public grain with grain of different grades; failing to file, print and publish schedules of rates and charges; and abandoning service without Commission approval. (R. 21.)

On August 30, 1944, respondents filed with the Commission their joint motion to dismiss (a) the complaint in its entirety, or (b) in the alternative, each of the separate charging paragraphs of the complaint. The stated grounds for the motion were that the subject matter of the complaint was beyond the jurisdiction of the Commission, and was exclusively within the jurisdiction of the Government of the United States by reason of paragraph 3, Section 8 of Article I of the Constitution of the United States, and of the United States Warehouse Act, and the Commodity Exchange Act,[2] and of the official regulations duly promulgated thereunder. (R. 25.)

On October 10, 1944, the Commission entered its order denying all motions of respondents to dismiss the Rice complaint and setting the cause for hearing before it on October 24, 1944. (R. 27.) The respondents in this case and in No. 471, thereupon filed in the District Court of

[2]Tit. 7 U.S.C. 1, et seq.

the United States for the Northern District of Illinois, Eastern Division, separate complaints for the purpose of enjoining Rice from the further prosecution of its proceeding before the Commission; of enjoining the Commission from entertaining further jurisdiction in the matter; and the Attorney General of the State of Illinois from instituting any proceeding against respondents for the purpose of enforcing any order of the Commission in the Rice proceeding. (R. 3-15.)

The defendants named in the respondents' complaint filed answers and motions to strike the complaint and dismiss the cause. (R. 36, 40, 43.) The two causes were consolidated for hearing in the trial Court and, on June 26, 1945, that Court entered a single order, dismissing both causes of action. (R. 91.) Upon separate appeals to the Seventh Circuit Court of Appeals, the order of the trial Court was reversed. (R. 126.) The Commission and the Attorney General of the State of Illinois, and Rice have filed here their petitions for writ of certiorari to review the decision of the Seventh Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT.

(1) This case is important, not alone to the parties named in the caption, but to warehousemen, grain dealers, farmers, states, and the public generally, all of whom are necessarily affected by the precedent which the judgment below creates. The history and development of all present-day public utility regulation stems from the early undertaking of the states to regulate warehouses and ware-

housemen. Since the landmark case of *Munn v. Illinois*, 94 U. S. 113, decided in 1877, warehousing has traditionally been a field for state regulation. The effect of the decision of the Court below, if permitted to stand, is to strip from the states this historic and important regulatory function as to every warehouseman who has obtained a license from the Secretary of Agriculture. Such a far-reaching decision, so destructive of long exercised state jurisdiction, ought not to become operative without the sanction of this Court.

(2) The Court below held that state regulation of Federally licensed warehousemen had been superseded in every respect. Yet the Federal act does not authorize the Secretary of Agriculture, among other things, to (a) fix or establish just and reasonable rates and charges; (b) prevent discriminatory rates and practices; (c) prevent the abandonment of warehousing service and capacity; or (d) approve or disapprove financial transactions or the issuance of securities. The effect of the decision of the Court below is therefore to create an hiatus in regulation relieving warehousemen, who secure Federal licenses, from important phases of regulation which are essential to protect the public interest. Unless and until this Court finds that the Congress intended to create such a vacuum in the regulation of warehouses, this undesirable result of the decision of the Court below ought not to become effective.

(3) The trial Court held that "there is no direct conflict between a licensing system to protect against fraudulent warehouse receipts, and utility regulation to pre-

serve the service in the public interest and it does not clearly appear that the state law has been completely superseded as to all of the matters covered by the complaint." (R. 90.) The Circuit Court rejected this view, holding that state regulation had been wholly superseded. It is open to grave doubt whether the view of the law expressed by the Circuit Court will be adopted by this Court—a doubt which will almost surely produce further litigation in other states unless put to rest in this case by this Court.

(4) These questions are questions of substance and general importance relating to the construction of the Constitution and Federal statutes. They have not been, but should be, settled by this Court. The misconstruction which the Court below has placed upon the pertinent Federal statutes should be corrected now by a decision of this Court, so that the Illinois Commerce Commission and other state commissions vested with authority under state statutes, to regulate warehousing, may proceed with their official duties within such jurisdictional bounds as this Court may prescribe; so that further unnecessary litigation may be avoided; so that warehousemen may know what will be the legal consequences of their acts; and so that the states may be left undisturbed in the exercise of their proper powers, which the Congress designed to preserve.

THE QUESTION PRESENTED.

The petition for certiorari and brief in support thereof, filed by the Attorney General of Illinois and the Illinois Commission, present a number of procedural questions of great importance. This *amicus curiae* concurs fully in the views of the petitioners on these procedural questions and believes that they are determinative of this case and call for a reversal of the judgment. However, the far-reaching precedent created by the decision of the Court below, which gives paramount concern to this *amicus curiae*, relates to the decision of that Court on the merits of the controversy. Accordingly, this brief will deal solely with the question on the merits, which may be stated as follows:

> Has the Federal Government, by legislation, so occupied and preempted the field of regulation of grain warehousemen as to deprive the Commission of authority to grant the relief and therefore regulate in the manner prayed for by Rice?

ARGUMENT.

I.

CLAIM OF SUPERSEDURE OF STATE AUTHORITY BY UNITED STATES WAREHOUSE ACT.

The question under this heading has been so thoroughly covered by the brief of the Attorney General of Illinois on behalf of the petitioners and the *amicus curiae* brief of the National Association of Railroad and Utilities Commissioners in support of the petition for the writ of certiorari herein that this particular phase of the case will not be argued in this brief. However, we adopt here

the argument and points advanced in the two said briefs referred to and by such reference incorporate the same in this brief.

II.

CONSTRUCTION OF SAID ACT.

Preliminarily, it is here pointed out that the United States Warehouse Act is an aggravated example of an attempted encroachment of Federal power upon state jurisdiction through indirection.

The fact that this Act is *permissive* does not change in any way the constitutional rules applicable to Federal vis-a-vis state power. Bearing in mind the ancient principle that the United States has only such powers as are conferred upon it by the explicit terms of the Federal Constitution and the necessarily implied powers flowing therefrom, it must be agreed that the only authority which the Federal Government may exercise over warehouses necessarily must stem from the commerce clause of that Constitution. If the Constitution does not confer the power, it cannot be supplied by consent of the owner of a warehouse. Jurisdiction over the subject matter may not be conferred by consent of the parties. Were this not so, this would be a government subject to no precise delimitation because its powers could constantly be augmented from time to time by the changing desires of individuals under permissive legislation, such as the Act considered. This Act gains no additional validity nor expansion of breadth of power because of its permissive nature. True

it is that the Act has no operative effect until the warehouseman has consented to its application to him by applying for and receiving a license but the power to accept the consent, if it exists at all, must exist *anterior* to the giving of the consent. Such consent confers no power that did not exist before such consent was given. The foregoing principles are elementary.

Section 2 of said Act (7 U.S.C. 242) provides as follows:

> "The term 'warehouse' as used in this chapter shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this chapter, 'person' includes a corporation or partnership or two or more persons having a joint or common interest; 'warehouseman' means a person lawfully engaged in the business of storing agricultural products; and 'receipt' means a warehouse receipt."

From the foregoing quoted section, it is seen that if *any* agricultural produce *is or may be* stored for interstate or foreign commerce in a warehouse located within one of the several states, the owner thereof may, under the literal provisions of this Act, qualify for a license thereunder. There is nothing in this Act that sets up any standard to be followed by the Secretary of Agriculture in granting licenses other than the standard set out in Section 2 of said Act, so far as intrastate commerce as contrasted with interstate or foreign commence is con-

cerned. There is no finding in said Act or any provision thereof which declares that agricultural products stored for *intrastate commerce* must or should be regulated by the Federal Government in order to protect its admitted power to regulate the storage of agricultural products stored for interstate or foreign commerce. This Act is silent on the two subjects immediately adverted to. Therefore, the Secretary of Agriculture is invested with unlimited discretion as to the licensing of warehouses *if any agricultural product is or may be stored for interstate or foreign commerce in a warehouse located within a State.* Under the literal wording of this Act—and the Secretary of Agriculture is not at liberty to sit in judgment upon the constitutionality of said Act but must administer it according to its terms, the validity or invalidity of said Act being a matter exclusively for the courts—, the Secretary of Agriculture may license a warehouse located within one of the states if only one sack of wheat is stored therein or may be stored therein for interstate or foreign commerce, even though there may be stored in such warehouse at the same time two hundred tons of wheat for intrastate commerce. Bear in mind, this Act says nothing about it being necessary for a warehouse, in order to secure a Federal license, to have a substantial amount of agricultural products stored therein for interstate or foreign commerce or that a majority of the commodities stored therein be agricultural products stored for interstate or foreign commerce, or that any particular portion of the commodities generally stored in said warehouse be agricultural products stored therein for interstate or foreign commerce. So we see that these vital matters by which it may

be determined whether state or Federal jurisdiction lawfully should apply are not mentioned in this Act but that all such matters are left to the unlimited discretion of the Secretary of Agriculture in determining whether or not he shall grant a license to a warehouseman under this Act.

There is no definition contained in the Act defining or explaining the meaning or the limitation to be applied to the phrase "stored for interstate or foreign commerce." The Secretary is left free to speculate and conjecture as to the meaning of said phrase and to put his own interpretation thereon. And this is the heart and soul of the Act, so far as delimitation of Federal and State authority is concerned. This failure of definition constitutes an uncertainty and indefiniteness, which grossly offend constitutional rules applicable to delegation of power by the Congress to the Executive.

It is true that in several sections of this Act the expression "agricultural products" is used without any qualification as to whether such products are stored in a warehouse for interstate or foreign commerce or for intrastate commerce. It might thus be argued that these facts indicate an intention to include agricultural products stored for intrastate commerce within the sweep of the authority of this act. But, as has heretofore been pointed out, no standard or formula has been set up in this Act whereby the Secretary of Agriculture may determine whether he may lawfully issue a license to a warehouseman. We make the point that this Act is either invalid for uncertainty resulting from a legislative fail-

ure to set up a valid and proper standard or formula by which the Secretary of Agriculture may be guided in administering this Act, or it must be held that this Act confers authority only to license warehouses engaged primarily in the storing of agricultural products for interstate or foreign commerce, where such warehouses are located within one of the several states.

It is believed that this is a question of such importance that this Court should grant certiorari and, upon the record herein, give a binding interpretation of this Act for the guidance of the Secretary, the several states and the industry involved. As the matter now stands, there is a grave uncertainty as to just how much authority is granted to the Secretary of Agriculture under this Act. By following the literal wording of the Act, the Secretary of Agriculture could assume to grant a Federal license covering a warehouse located within a State even though an infinitesimal part of the commodities stored therein may be agricultural products stored for interstate or foreign commerce. Having granted the Federal license, the Secretary of Agriculture, by virtue of the provisions of Section 29 of said Act (7 U.S.C. 269), could claim that he had exclusive jurisdiction over said warehouse notwithstanding the fact that ninty-nine percent of the commodities stored therein may be commodities that have nothing to do whatsoever with or affect in any way interstate or foreign commeree. *It is the Federal license that is the criterion*, not commodities that may be stored for interstate or foreign commerce. Here we have the aggravated example of attempted encroachment upon State authority by the Federal power through indirection.

First, the Act provides that a Federal license may be granted if any agricultural product is or may be stored in a warehouse for interstate or foreign commerce and, second, *after such license has been granted,* then all these other alleged powers purportedly granted by this Act to the Secretary of Agriculture follow ineluctably from the provisions thereof.

This Court has established, by a long line of decisions, the rule that Federal encroachment upon State power is not to be lightly assumed and that before this Court will hold that state power has been superseded by Federal authority, the Act of the Congress purporting to supersede state power must be clear and unambiguous and the attempt to so supersede must be plainly expressed and furthermore that the repugnance between the two jurisdictions must be irreconcilable.

Palmer v. Massachusetts, 308 U. S. 79, 85, 84 L. ed. 93, 98;

Kelly v. Washington, 302 U. S. 1, 9 to 10, 82 L. ed. 3, 10;

Simpson v. Shepard, 230 U. S. 352, 402, 57 L. ed. 1511, 1542.

While it is true that this Court in the case of *United States v. Hastings,* 296 U. S. 188, held that an indictment for the stealing of agricultural products from a Federally licensed warehouse must contain an allegation that the products stolen were stored in such warehouse for interstate or foreign commerce, the holding in that case did not purport to be a complete construction of said Act. It was pointed out by this Court in that case that the record

therein was not sufficient to justify a more elaborate construction of the Act. The question therein decided was narrowly confined to Section 30 of the Act (7 U.S.C. 270), which provides for punishment for the violation of certain provisions of said Act, and also Section 17 of said Act (7 U.S.C. 259) authorizing and requiring the issuance by a warehouseman of warehouse receipts covering agricultural products stored in a warehouse for interstate or foreign commerce. Therefore, it is of the first importance that this Court give a binding interpretation of this Act so that the Federal authority on the one hand and the state authorities on the other hand may have a proper guide whereby they may lawfully exercise their proper jurisdiction in this important field of commerce and trade. Of course, it can be contended and it has been contended that in a situation of the nature herein described the Federal authority should sweep before it all state authority because of the paramount necessity for uniformity. This Court has not subscribed to that doctrine and very definitely said so in the case of *Davies Warehouse Company v. Bowles*, 321 U. S. 144. It was there pointed out by Mr. Justice Jackson in the prevailing opinion in that case that the very nature of our dual sovereignty would not lend itself to uniformity or to excessive efficiency. It was pointed out in that case that the accommodation which the central authority must accord to the jurisdiction of the states necessarily involved a procedure that might not be as efficient as though all jurisdiction were wielded by the central government.

The Circuit Court of Appeals in its decision in this case made the following observation:

"Evidently the Act in its relation to warehouses is *limited to interstate commerce*, and the *Secretary's jurisdiction is confined to that field.*" (Emphasis supplied.) (156 Fed. (2d) 39.)

This statement in the Court's opinion in this case is more of an observation than a direct holding and in light of the fact that the opinion therein raises the question of the breadth of the Secretary's jurisdiction, it seems most appropriate that this Court should grant certiorari for the purpose of settling this question once and for all. When we read the decision of the Supreme Court of South Dakota (*In re Farmers Coop. Assn.*, 8 N. W. (2d) 557), cited and relied upon by the Court below, construing this Act to a point of absurdity, one may well understand the crying necessity for this Court to grant certiorari in this case.

CONCLUSION.

Based upon the foregoing argument and authorities, we respectfully urge upon this Court that it grant certiorari in this case for the purpose of clarifying the uncertain, contradictory and ambiguous provisions of the Act in question herein. If this Act is valid in its entirety and has wholly superseded state jurisdiction wherever a warehouse has been licensed by the Secretary of Agriculture, it is most important to the Federal Government, the several state governments and the industry concerned that that fact be declared by this Court. If, on the other hand, this Act is invalid in whole or in part because of its uncertain and ambiguous provisions and because of the fact that no

definite standard or formula has been set up therein to guide the Secretary of Agriculture in administering said Act, then, it is most important to the parties heretofore mentioned that this fact be declared. And we may here observe that this Court is the only tribunal that can make these final and binding declarations.

Therefore, it is prayed that this Court accept for filing this brief and that the petition for writ of certiorari herein be granted and that this Court render its decision comprehensively interpreting and construing this Act to the end that all interested parties may know just exactly what jurisdiction is conferred upon the Federal Government by the provisions thereof.

Dated, San Francisco, California,
October 4, 1946.

Respectfully submitted,

EVERETT C. MCKEAGE,
RODERICK B. CASSIDY,
JOHN M. GREGORY,
H. F. WIGGINS,
BORIS H. LAKUSTA,
Attorneys for the Railroad Commission of the State of California,
As Amicus Curiae.

FILE COPY

Office - Sup. Ct. U. S.
FILED
FEB 12 1947
CHARLES ELMORE CROPLEY

Nos. 470, 471, 472, and 473

In the Supreme Court of the United States

OCTOBER TERM, 1946

DANIEL F. RICE ET AL. AND ILLINOIS COMMERCE COMMISSION ET AL., PETITIONERS

v.

GREAT LAKES ELEVATOR CORPORATION ET AL.

DANIEL F. RICE ET AL. AND ILLINOIS COMMERCE COMMISSION ET AL., PETITIONERS

v.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INDEX

	Page
Opinion below	1
Jurisdiction	2
Statutes involved	2
Questions presented	2
Statement	3
Summary of argument	7
Argument:	
Nos. 471 and 473—The Commodity Exchange Act	12
I. The principles of law to be applied are clearly established. The controversy relates only to the manner of their application to the facts in this case	15
II. The United States Warehouse Act as amended in 1931 was specifically intended to supersede all State regulatory laws applicable to federally licensed warehouses. That intention is clearly manifested by the provisions of the act and by its legislative history	18
III. The United States Warehouse Act as amended in 1931 superseded the State laws invoked by the Rice complaint because enforcement of the State laws would infringe the policy of the Federal act	42
A. The rate regulatory provisions of the State law invoked by the Rice complaint infringe the policy of the United States Warehouse Act	44
B. The State statutory provisions regarding discriminatory and preferential practices invoked by the Rice complaint infringe the policy of the United States Warehouse Act	52
C. The State law relating to the licensing of warehousemen, abandonment of services and inadequacy of services invoked by the Rice complaint infringes the policy of the United States Warehouse Act	57
D. The State constitutional prohibition against a public grain warehouseman dealing in grain infringes the policy of the United States Warehouse Act	61
E. The State statutory provisions relating to contracts between affiliates or with other public utilities, and relating to the issuance of securities, as invoked by the Rice complaint, probably infringe the policy of the United States Warehouse Act	63
Conclusion	69

730391—47——1

CITATIONS

Cases: Page

Adams Express Co. v. *Croninger*, 226 U. S. 491 43
Edward R. Bacon Grain Co. v. *City of Chicago*, 325 Ill. App. 245, 59 N. E. (2d) 689 ..... 25, 26
Binderup v. *Pathe Exchange*, 263 U. S. 291 41
Charleston & Car. R. R. v. *Varnville Co.*, 237 U. S. 597 43
Chic. R. I. &c. Ry. v. *Hardwick Elevator Co.*, 226 U. S. 426 43
Cloverleaf Co. v. *Patterson*, 315 U. S. 148 ..... 15, 16, 17, 67
Farmers Cooperative Ass'n., In re, 8 N. W. (2d) 557 ..... 25, 27, 51
Federal Compress Co. v. *McLean*, 291 U. S. 17 41
Hannah v. *People*, 198 Ill. 77 61
Hill v. *Florida*, 325 U. S. 538 68
Hines v. *Davidowitz*, 312 U. S. 52 ..... 16, 43
Ill. Gas Co. v. *Public Serv. Co.*, 314 U. S. 498 ..... 43, 60
Interstate Com. Commission v. *Cincinnati, etc. Ry. Co.*, 167 U. S. 479 49
Missouri Pacific v. *Porter*, 273 U. S. 341 43
Munn v. *Illinois*, 94 U. S. 113 15
Napier v. *Atlantic Coast Line*, 272 U. S. 605 43
New York Central R. R. Co. v. *Winfield*, 244 U. S. 147 43
North Carolina v. *United States*, 325 U. S. 507 52
Oregon-Washington Co. v. *Washington*, 270 U. S. 87 43
Penn Dairies v. *Milk Control Comm'n.*, 318 U. S. 261 68
Prudential Ins. Co. v. *Benjamin*, No. 707, last term 15
Southern Ry. Co. v. *R. R. Comm. of Indiana*, 236 U. S. 439 ..... 43, 57
Southern Pacific Co. v. *Arizona*, 325 U. S. 761 16
Tex. & Pac. Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426 43
Townsend v. *Yeomans*, 301 U. S. 441 41
Union Brokerage Co. v. *Jensen*, 322 U. S. 202 38
United States v. *Hastings*, 296 U. S. 188 ..... 40, 56

Statutes:

Illinois Constitution of 1870, Art. XIII 2
Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, ch. 114, secs. 293–326c 2, 12
Illinois Public Utilities Act, Ill. Rev. Stats. 1945, ch. 111⅔ 2
Section 8a 63, 64
Section 21 64
Section 27 ..... 64, 65
Illinois Warehouse Receipts Act, Ill. Rev. Stats. 1945, ch. 114, sec. 234 62
Commodity Exchange Act, 7 U. S. C. 1 *et seq* 12
Section 5a 12, 23, 59
Interstate Commerce Act, Sec. 13 52
United States Warehouse Act, 7 U. S. C. 241 *et seq.*:
Section 3 ..... 33, 34, 57, 58
Section 4 33
Section 6 ..... 19, 20, 33, 58

Statutes—Continued
United States Warehouse Act—Continued — Page
Section 7 — 59
Section 8 — 33
Section 10 — 34
Section 11 — 33
Section 12 — 34
Section 13 — 33, 44, 46
Section 15 — 33, 54
Section 16 — 34, 54
Section 17 — 34
Section 18 — 34, 39, 54, 61, 62
Section 19 — 33
Section 20 — 34, 39
Section 21 — 55
Section 22 — 34
Section 23 — 34, 58
Section 24 — 34, 35, 58
Section 25 — 33, 34, 35, 45, 55
Section 26 — 35
Section 27 — 34
Section 28 — 34, 44
Section 29 — 18, 20, 36, 38, 39, 48, 57
Section 30 — 55
Regulations:
7 CFR 102 *et seq* — 35
7 CFR 102.6 — 65
7 CFR 102.7 — 58
7 CFR 102.9 — 36, 47
7 CFR 102.35 — 44, 45
7 CFR 102.39 — 45
7 CFR 102.40 — 58
7 CFR 102.47 — 58
7 CFR 102.48 — 54
7 CFR 102.50 — 54
7 CFR 102.53–55 — 58
7 CFR 102.98 — 45
7 CFR 102.99 — 36, 47
Miscellaneous:
53 Cong. Rec., page 5925 — 19
H. Rept. 4, 71st Cong., 1st Sess. — 20, 22, 23
H. Rept. 60, 64th Cong., 1st Sess. — 28, 32
H. R. 9419, 64th Cong. — 19
S. Rept. 1795, 71st Cong., 3d Sess. — 20, 21, 22, 36, 37, 38
Uniform Warehouse Receipts Act, 3 Uniform Laws, Annotated — 29, 62
United States Department of Agriculture Miscellaneous Circular No. 51, Jan. 1926 — 30

In the Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 470 and 472

DANIEL F. RICE ET AL. AND ILLINOIS COMMERCE COMMISSION ET AL., PETITIONERS

v.

GREAT LAKES ELEVATOR CORPORATION ET AL.

Nos. 471 and 473

DANIEL F. RICE ET AL. AND ILLINOIS COMMERCE COMMISSION ET AL., PETITIONERS

v.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 87–106)[1] is reported in 156 F. (2d) 33.

---

[1] All references unless otherwise indicated are to the record in Nos. 470 and 472. References to the record in Nos. 471 and 473 will be referred to as No. 471.

JURISDICTION

The judgments of the court below were entered on June 7, 1946 (R. 107; R. 262 in No. 471). The petitions for a writ of certiorari were filed on September 6, 1946, and granted on October 21, 1946. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED

The Federal statutes involved are the United States Warehouse Act, 7 U. S. C. 241 *et seq.*, and the Commodity Exchange Act, 7 U. S. C. 1 *et seq.* They are printed as appendices in the briefs of the petitioner Daniel F. Rice & Co.

The State constitutional provision and statutes involved are Article XIII of the Illinois Constitution of 1870, the Illinois Public Utilities Act (Ill. Rev. Stats. 1945, Ch. 111–2/3), and the Illinois Grain Warehouse Act (Ill. Rev. Stats. 1945, Ch. 114, Sections 293–326a). A pamphlet copy of the Illinois Public Utilities Act accompanies the brief of the petitioner Daniel F. Rice & Co.

QUESTIONS PRESENTED

This brief is submitted by the United States, *amicus curiae,* for the purpose of indicating the Government's interest in the substantive question presented by the petitioners in Nos. 470 and 472, which may be stated as follows:

> Has the United States so occupied and preempted the field of regulation of grain warehousemen licensed under the United

States Warehouse Act as to deprive the Illinois Commerce Commission of authority to regulate them under State law in the manner contended by the petitioners?

We will discuss only briefly (pp. 12–15) the substantive question presented by the petitioners in Nos. 471 and 473, which is:

> Has the United States so occupied and preempted the field of regulation of boards of trade designated "contract markets" under the Commodity Exchange Act as to deprive the Illinois Commerce Commission of authority to regulate them under State law in the manner contended by the petitioners?

None of the procedural questions presented by the petitioners is discussed in this brief.

STATEMENT

The respondents in Nos. 470 and 472 are warehousemen engaged in the business of operating public warehouses for the storage of grain in the State of Illinois. The warehouses are operated under licenses issued by the Secretary of Agriculture of the United States pursuant to the United States Warehouse Act, 7 U. S. C. 241 *et seq.* (R. 3).

The respondent in Nos. 471 and 473 is the Board of Trade of the City of Chicago, which is an Illinois corporation operating a commercial grain exchange that has been designated a "contract market" under the Commodity Exchange Act (R. 4).

Daniel F. Rice & Company (hereinafter called "Rice"), one of the petitioners, is an owner, shipper and dealer in grain and is a customer of the respondent warehousemen. The Illinois Commerce Commission (hereinafter called "Commission"), another of the petitioners, is an agency of the State of Illinois with certain regulatory jurisdiction over public utility companies, including public grain warehouses (R. 3–4), and over boards of trade (R. 4–5, in No. 471), operating within the State.

On July 28, 1944, Rice filed with the Commission a complaint against the respondent warehousemen alleging violations of the Illinois Public Utilities Act and the Illinois Grain Warehouse Act (R. 5). The violations alleged are that the warehousemen charge unreasonable, unjust, and excessive rates; pursue discriminatory practices; operate without a State license; fail to obtain Commission approval of contracts and security issues; mix public grain with grain of different grades; fail to file, print, and publish schedules of rates and charges; abandon service without Commission approval; store in their public warehouses grain in which they have an interest; and maintain warehouses in an unsafe condition. (R. 13–21).

The Rice complaint before the Commission also joined the respondent Board of Trade as a defendant for the purpose of compelling changes in the warehousing practices in question through regulations of the Board of Trade. The complaint

alleged that the Board of Trade had adopted and made effective rules with respect to warehousing without first obtaining the approval of the Commission as required by the Illinois Grain Warehouse Act (R. 4–5, in No. 471).

The respondents filed with the Commission motions to dismiss the proceeding on the ground that the Commission was without jurisdiction because the United States Warehouse Act and the Commodity Exchange Act have preempted and occupied the field of regulation of federally licensed warehouses and "contract markets" and have superseded the authority of the Commission to regulate in the manner sought by the Rice complaint (R. 22; R. 20, in No. 471). On October 10, 1944, the Commission denied the motions to dismiss and set the cause for hearing on the merits (R. 24–25 in R. 6, in No. 471).

Thereupon the respondent warehousemen and the respondent Board of Trade filed separate complaints in the District Court for the purpose of enjoining Rice from further prosecuting the proceeding before the Commission, for the purpose of enjoining the Commission from entertaining further jurisdiction of the proceeding, and for the purpose of enjoining the Attorney General of the State of Illinois from instituting any proceeding against the respondents to enforce any order of the Commission in the Rice proceeding. (R. 1; R. 3 in No. 471.) The petitioners moved to dismiss the complaints (R. 34; R. 214,

730391—47——2

in No. 471), and after a hearing the motions were granted by the District Court R. 78; R. 223, in No. 471). The Circuit Court of Appeals for the Seventh Circuit reversed the judgments of the District Court and remanded the cases with directions to overrule the petitioners' motions to strike the complaints and to proceed in accordance with the views expressed by the Circuit Court of Appeals (R. 107; R. 262, in No. 471). The Court wrote a single opinion covering both cases.

The views of the court below with respect to the merits of the controversy in the warehouse cases (Nos. 470 and 472) are that the Commission is without jurisdiction to regulate the respondent warehousemen in the manner contended by the petitioners because (1) the regulatory jurisdiction asserted by the petitioners relates to the operation of federally licensed warehouses and the storage of grain therein for which receipts are issued, (2) such regulation by the State Commission either would conflict with the provisions of the United States Warehouse Act or would plainly and palpably infringe its policy or threaten the primary purpose Congress sought to accomplish, and (3) inasmuch as the United States Warehouse Act was enacted pursuant to the plenary authority of Congress to regulate interstate and foreign commerce, the State law, in the respects invoked by the petitioners, has been superseded by the Federal act (R. 89–104).

It is respectfully submitted that these views of the court below are correct.

SUMMARY OF ARGUMENT

I. The State statute requiring the rules of the Board of Trade dealing with warehousing to be approved by the Illinois Public Utility Commission deals with a subject matter that in general is within the scope of the Commodity Exchange Act. In the present posture of the cases, however, it does not appear that the State law would necessarily overlap or interfere with the administration or operation of the Federal statute.

II. Warehouses used for the storage of grain for interstate or foreign commerce are subject to regulation by either the State or Federal government because the warehousing of grain is not a field of commerce where national uniformity is necessarily essential. Where the power to regulate with respect to commerce exists in both the Federal and State government, the Federal government, sometimes makes only a partial use of its power, and in such event the State may regulate with respect to those phases of the commerce that are left unregulated. However, if Congress fully exercises its power of regulation in a particular field of commerce the Federal regulation becomes exclusive in its application and supersedes any State regulation on the same subject. Whether supersedure results depends upon the intention of the Congress. Congress will be deemed to have intended to supersede a State law if the purpose to do so is clearly manifested, if the policy of the Federal act would be in-

fringed by the enforcement of the State law, or if the Federal and State laws conflict, either specifically or by implication.

III. The United States Warehouse Act as originally enacted in 1916 contemplated dual regulation of federally licensed warehouses by State and Federal governments and made State regulation paramount in the event of conflict. However, the dual system proved to be unsatisfactory and the act was amended in 1931 for the specific purpose of making federally licensed warehouses subject to the exclusive jurisdiction of the Federal government. That intention was clearly evidenced by the language of the amendment and its legislative history.

The United States Warehouse Act is a general regulatory act that was intended to cover the entire field of regulation of federally licensed warehouses used for the storage of agricultural products for interstate or foreign commerce. It is not, as contended by the petitioners, limited in scope. Its broad scope is evident from its legislative history, from the purposes sought to be accomplished in the actual administration of the act, and from an analysis of its provisions. Therefore, when Congress amended the act in 1931 and made exclusive the jurisdiction conferred by the act upon the Secretary of Agriculture with respect to a federally licensed warehouseman, the dual system of Federal-State regulation was terminated and the entire field of regulation was pre-empted by Congress.

IV. The State regulatory laws invoked by the Rice complaint have been superseded by the United States Warehouse Act because they relate to particular fields of regulation that have been specifically occupied by the Federal act, and their enforcement in those fields would plainly infringe the policy of Congress. It is not necessary to show that the provisions of the State and Federal acts are in irreconcilable conflict. It is enough that the proposed State regulation relates to the precise subject matter regulated by the Federal act, because with respect to that subject matter it was the policy of Congress to assume exclusive jurisdiction. Any doubts as to whether the State statute is superseded are resolved by the express declaration of Congressional intent in the Federal act.

A. The rate regulatory provisions of the State law invoked in these cases have been superseded because the United States Warehouse Act provides for regulation of the rates that may be charged by a federally licensed warehouseman for the storage of grain for interstate or foreign commerce. The rates must be fair, reasonable and non-discriminatory, and exclusive jurisdiction to determine those factors is vested in the Secretary of Agriculture. The method of regulation under the Federal act is different from the one provided by the State law. That fact, however, is immaterial, because any attempt by a State agency to prescribe reasonable rates to be charged by a Federal licensee would be in-

consistent with the system of rate regulation provided by Congress.

B. The State statutory provisions regarding discriminatory and preferential practices invoked by the Rice complaint have been superseded because the United States Warehouse Act prohibits all such practices and provides for enforcement of the prohibition by the Secretary of Agriculture.

C. The State law relating to adequacy of services, operation without a State license, and abandonment of services has likewise been superseded because these subjects are governed by the United States Warehouse Act. The act and the regulations of the Secretary issued thereunder provide in considerable detail for regulation of the adequacy of the services provided by a Federal licensee. Further regulation by the State would be duplicative. Any attempt of the State to require a Federal licensee to obtain a State license before engaging in the business of warehousing in accordance with the provisions of his Federal license would be in direct derogation of the Federal act. And the State's lack of jurisdiction over the abandonment of services is a natural corollary of the preceding two conclusions. If a State may not regulate the adequacy of the services provided by a warehouseman or require him to obtain a State license there is no basis for State control of his abandonment of services.

D. The State Constitutional prohibition against a public grain warehouseman's storing his own

grain infringes the policy of the United States Warehouse Act, which is to permit a federally licensed warehouseman to deal in his own grain and to mix it with the grain of other owners if the practice is disclosed. Disclosure of the warehouseman's interest in the grain covered by a warehouse receipt is the extent of the restriction Congress sought to impose, and the State Constitutional prohibition is in conflict with that policy.

E. The State statutory provisions relating to contracts between affiliates or with other public utilities, and relating to the issuance of securities by a warehouseman, probably have been superseded because they are inconsistent with the regulatory policy of the Federal act. The United States Warehouse Act contains no provisions relating specifically to these subjects and the Secretary of Agriculture has not purported to exercise supervisory powers comparable to those allegedly vested in the Illinois Commerce Commission. The conclusion is not free from doubt, but the statutory provisions in question appear to be so closely related to the warehouseman's ability to provide adequate services at reasonable rates as to be part of the field of regulation completely occupied by Congress. The failure of Congress to provide for this type of controls may be said to indicate a Congressional purpose to accomplish its regulatory objectives without the exercise of those controls.

ARGUMENT

NOS. 471 AND 473—THE COMMODITY EXCHANGE ACT

Except for this statement, this brief will not discuss the questions presented in the Board of Trade cases (Nos. 471 and 473). They involve the narrow question of the jurisdiction of the State to require the rules and regulations of the Board of Trade that relate to warehousing to be approved by the Commission before they become effective. Section 194b of the Illinois Grain Warehouse Act requires such approval, but the Board of Trade contends that the requirement has been superseded by the Commodity Exchange Act. The Commodity Exchange Act (7 U. S. C. 1 *et seq.*) provides for the comprehensive regulation of trading in futures on commodity exchanges designated as contract markets by the Secretary. The Chicago Board of Trade is a designated contract market under that act.

The Commodity Exchange Act contemplates that a contract market will adopt rules governing the execution of futures contracts and requires the contract market to file its rules with the Secretary of Agriculture. References to the rules are contained in sections 4, 4a (1), 4a (2), 4a (3), 4b, 4c, 4d 4e, 4f, 4i, 5b, 5a (3), 6a and 6a (2); the filing requirement is in section 5a (1). The act also contemplates the adoption of rules relating to the acceptance of warehouse receipts in satisfaction of futures contracts. Section 5a (7) affirmatively provides that receipts issued by a warehouse licensed under the United States

Warehouse Act must be accepted without discrimination in satisfaction of futures contracts made subject to the rules of the contract market, provided the warehouse meets such reasonable requirements as may be imposed by the contract market on other warehouses as to location, accessibility and suitability for warehousing and delivery purposes. Rules adopted by the Board of Trade with respect to warehousing (R. 96, 155–159, 180) are within the scope of these statutory references.

The delivery of grain and Board of Trade rules governing the conditions under which grain may be delivered in satisfaction of futures contracts are necessary and important incidents in the establishment and maintenance of contract markets under the Commodity Exchange Act. Any Board of Trade rule relating to the delivery of grain on futures contracts which tended to facilitate or make possible the cornering of grain or the manipulation of prices would subject the Board of Trade to loss of its contract market designation and the right to deal in futures. This would be true whether or not the rules governing deliveries related to federally-licensed warehouses or to those licensed by the State, and regardless of whether such rules were sanctioned by or required by the State. The Commodity Exchange Act does not, however, expressly provide for exclusive federal control over the rules of the contract markets; the Secretary considers the rules

only in relation to the specific subjects referred to in the federal statute. The act differs from the United States Warehouse Act involved in Nos. 470 and 472, which specifically declares that the authority of the Secretary shall be "exclusive" and which establishes a detailed scheme of regulation covering the same field as the comparable Illinois statute.

The state law involved in Nos. 471 and 473 requires state approval of contract market rules, all of which must be filed with the Secretary and some of which, at least, have a relation to the scheme of regulation provided by the Commodity Exchange Act. But although there is a possibility of conflict between state regulation of Board of Trade rules relating to warehousing and the administration of the Commodity Exchange Act, until the State Commission acts it cannot be known whether its order will affect, injuriously or otherwise, the policy of the federal statute or its administration, or those rules which are related to that policy. The Government cannot say at the present time that any conflict or interference or overlapping necessarily would result. There can be no doubt, of course, that the State's authority would be limited by the federal Act if the State Commission were to require the Board of Trade to adopt a rule that interfered with the administration or the policy of that Act.

In the remainder of the brief all references are to the parties and issues in Nos. 470 and 472.

I

THE PRINCIPLES OF LAW TO BE APPLIED ARE CLEARLY ESTABLISHED. THE CONTROVERSY RELATES ONLY TO THE MANNER OF THEIR APPLICATION TO THE FACTS IN THIS CASE

The authority of the State of Illinois to regulate public warehouses for the storage of grain was established by *Munn* v. *Illinois,* 94 U. S. 113, and it is not disputed that, unless superseded by Federal legislation, the State's authority extends to the regulation of warehouses used for the storage of grain for interstate or foreign commerce, as well as to warehouses used for the storage of grain for intrastate commerce. The warehousing of grain is not a field of commerce where national uniformity is essential, and in such fields of commerce "either the state or federal government may act." *Cloverleaf Co.* v. *Patterson,* 315 U. S. 148, 155.

However, Congress has the authority to exercise exclusive control over operations in interstate and foreign commerce, and it was conceded in the court below that Congress may, if it wishes, exercise all regulatory power over federally licensed warehouses (i. e., warehouses engaged in the storage of grain for interstate or foreign commerce), to the exclusion of the State (R. 92). See *Prudential Ins. Co.* v. *Benjamin,* No. 707, last Term, decided June 3, 1946.

The tests to be used for determining whether a Federal act supersedes a State statute regulating

interstate commerce have been variously stated, and three of the more recent statements are noted in the margin.[1a] They may be summarized as follows: The problem is one of determining the intention of Congress. Congress will be deemed to have intended to supersede a State act if the purpose to do so is expressly manifested.

A more difficult question arises if Congressional intent is not specifically expressed in the statute. However, the intent of Congress is apparent if the State law conflicts with the provisions of the Federal statute or if the State law would prevent attainment of the Federal policy. If Congress has affirmatively regulated an in-

[1a] "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested [citing cases], or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. [Citing cases.]" *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766.

"Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67.

Where the power to legislate with respect to interstate or foreign commerce exists in both the State and Federal governments, and "where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application." *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, 155–6.

dustry, it will be presumed that Congress did not intend the same field to be regulated by another sovereign. This is particularly true in the cases in which the regulatory statute confers discretion on the Federal agency. In that event, even though the State enacts a similar regulation to be administered by state officials, a conflict in administration would result and the State statute would be superseded. The essence of the problem is whether the State law by its terms, by implication, or by its practical administration would impair Federal policy or would conflict with the Federal act.

When it has been determined that Congress intended to occupy a field exclusively, the question may still arise as to whether the State law operates in the field that the Federal government has preempted. The subject matter of the Federal statute is determined by an examination of the provisions of the statute and its Constitutional purpose. In general, it may be said that the field occupied by a Federal regulatory statute includes matters ancillary to that field or so closely related to it as to be part of the basic subject matter covered by the Federal statute. *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148.

The State of Illinois has provided in its constitution and by statute for regulation by the Illinois Commerce Commission of all public warehouses engaged in the storage of grain for compensation. Congress has provided in the United

States Warehouse Act for regulation by the Secretary of Agriculture of warehouses used for the storage of grain for interstate or foreign commerce if the warehouseman applies for and receives a Federal license. The question is whether the Federal act supersedes in whole or in part the provisions of the State law when applied to federally licensed warehouses.

II

THE UNITED STATES WAREHOUSE ACT AS AMENDED IN 1931 WAS SPECIFICALLY INTENDED TO SUPERSEDE ALL STATE REGULATORY LAWS APPLICABLE TO FEDERALLY LICENSED WAREHOUSES. THAT INTENTION IS CLEARLY MANIFESTED BY THE PROVISIONS OF THE ACT AND BY ITS LEGISLATIVE HISTORY

The United States Warehouse Act consists of thirty-three sections that provide in considerable detail for licensing and regulation by the Secretary of Agriculture of warehouses in which agricultural products are stored for interstate or foreign commerce. However, the act as originally enacted in 1916 (39 Stat. 486) recognized the existence of State regulatory systems and made the Federal act subservient to State laws in the event of conflict. Section 29 provided that:

> * * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of

> Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *

Furthermore, section 6 required an applicant for a Federal warehouse license to provide a bond "to secure the faithful performance of his obligations as a warehouseman under the laws of the state, district or territory in which he is conducting such warehouse, as well as under the terms of this Act, and the rules and regulations prescribed hereunder."

With reference to this dual system of regulation, Congressman Lever, Chairman of the House Committee on Agriculture, made the following remark on the floor of the House of Representatives when H. R. 9419, 64th Congress, which became the United States Warehouse Act, was under consideration:

> I wish also to point out very distinctly that the system proposed here can not interfere with any system organized under State or local authority. I recognize the value of State and local systems of warehousing farm products and I would not in the least hamper them. I believe emphatically that there is ample work for both systems to do and that the two will quickly harmonize their efforts and aims. (Cong. Rec. Vol. 53, pt. 6, April 11, 1916, page 5925.)

The hope for harmonious operation of the dual system of regulation proved to be illusory, however, and in 1931 section 29 was amended for the express purpose of permitting federally licensed warehouses to operate without complying with State regulatory laws.[2] Section 29, as amended, 46 Stat. 1465, reads as follows:

> In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; *but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive* with respect to all persons securing a license hereunder so long as said license remains in effect * * * [Italics supplied.]

At the same time, section 6 was amended to omit the requirement that the bond be conditioned on compliance with the laws of the State, district or territory in which the warehouseman conducts his business (46 Stat. 1463).

The language of the amendment clearly indicates that federally licensed warehouses were intended thereafter to operate independently of State regulatory laws. The regulatory provisions of the Federal act were expressly made exclusive

[2] The amendment was enacted at the request of the Department of Agriculture (H. Rept. 4, 71st Cong., 1st Sess., p. 5; S. Rept. 1775, 71st Cong., 3d Sess., p. 3).

for warehousemen licensed under the act. This intention is made abundantly clear by the House Committee and the Senate Committee reports that explain the purpose of the amendment. The Senate Committee report says:

> Section 29 of the act now provides "that nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen," etc. The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected, there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom. It does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and *if it is decided to secure a license under the Federal act then the*

warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes. Again, this amendment is in harmony with the policy laid down in the national banking act. *In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency.* [Italics supplied.] (S. Rept. 1775, 71st Cong., 3d Sess., p. 2.)

The House committee report said:

Under section 29 of the law as at present, if the Federal act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that

> *the Federal law can be negatived by State legislation.* This condition has worked against Federal warehouse receipts attaining that degree of usefulness for collateral purposes in the financing of agricultural products which Congress had intended they should attain. Bankers generally have recognized the worthy purposes of the warehouse act, but when they are approached to loan large amounts they view section 29 of the present law with considerable misgiving. *To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal warehouse act stand on its own bottom.* [Italics supplied.] (H. Rept. 4, 71st Cong., 1st Sess., pp. 4–5.)

That Congress understood that a federally licensed warehouse might lawfully operate without a State license is indicated by the language used in Section 5a (7) of the Commodity Exchange Act, 7 U. S. C. 7a (7). This section, added to the Act by amendment in 1936, requires that receipts issued under the United States Warehouse Act be accepted in satisfaction of futures contracts "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State."

The position of the petitioners and of the National Association of Railroad and Utility Commissioners, in its brief *amicus curiae* in support

of the petition for a writ of certiorari, may be summarized as follows: The petitioners recognize that the Federal act by its express terms provides that the authority conferred on the Secretary of Agriculture by the act is "exclusive" with respect to Federal licensees. Their contention that the State statute is not superseded is based on two arguments: First, petitioners argue that the Federal statute is a narrow, limited statute that does not occupy the entire field of warehouse regulation. It is not disputed that the Federal statute contains provisions dealing with rates, discrimination, and other matters covered in Rice's complaint. Petitioners urge, however, that the State statute embodies a better method of regulation than the one contained in the United States Warehouse Act, and that the State statute deals with the subject matter in a way that is not in conflict with the Federal statute. Petitioners' second argument is that the amendment to Section 29 did not mean that Federal regulation was intended to exclude State regulation of federally licensed warehouses, but only to make Federal regulation supreme in the event of an actual conflict.

Petitioners' arguments are based on an erroneous premise and ignore the clear language of the United States Warehouse Act and its legislative history. There is little doubt that Congress intended Federal regulation to be "exclusive" in the field covered by the statute and not merely

supreme in the event of conflict. The United States Warehouse Act is a comprehensive regulatory statute. This is shown by the terms of the act, its history, and its actual administration. The State act regulates the same basic subject matter.

It is the Government's position that State statutes are expressly superseded in the field covered by the Federal statute. The field occupied by Congress is measured by the scope of the Secretary's authority under that act. Obviously, a State statute dealing with a matter that is not ancillary to or directly related to the field of Federal regulation is not superseded. For example, the State is not foreclosed by the Federal Warehouse Act from adopting suitable labor regulations, fire control ordinances,[3] zoning laws, or other statutes dealing with subject matter not covered by the Federal statute. It is only in the field in which the Secretary's authority is exclusive that the State statute is superseded.

The conclusion that the State warehouse statute is superseded is supported by the decision of the Supreme Court of South Dakota in *In re Farmers Cooperative Association,* 8 N. W. (2d) 557, the only case that has considered the question whether the Congress has preempted the field of regulation of federally licensed warehouses. In that case, the South Dakota Public Utilities Commis-

[3] See *Edward R. Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 59 N. E. (2d) 689 (1945).

sion instituted a proceeding to require a federally licensed warehouse to obtain a license to operate under the State statute. Before a license could be granted under the State law, the warehouseman was required to file a bond with the Commission, and by acquiring a State license the warehouseman would be subject to State regulation of rates, receipts, and other matters relating to warehouse business and methods. After examining the Federal statute and its legislative history and comparing it with the State law, the court concluded that the State law was superseded. The court stated (p. 562):

> The collision between these acts is head on. It is but a question of which master the Cooperative [warehouse] must serve.

The South Dakota statute was in many respects similar to the Illinois statute involved in these cases. It was a comprehensive regulatory statute dealing with most aspects of the warehouse trade. The reasoning of the court in that case leads to the conclusion that the Illinois statute is superseded.

In *Edward R. Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 59 N. E. (2d) 689, the appellate court of Illinois concluded that a municipal fire control ordinance was not superseded by the United States Warehouse Act. In the course of its opinion the court discussed the decision of the Supreme Court of South Dakota

in *In re Farmers Cooperative Association, supra,* (p. 253):

> Plaintiffs place great reliance upon the case of In re Farmers Cooperative Ass'n, * * * 8 N. W. (2d) 557, decided by the Supreme Court of South Dakota in March 1943. That case involved the validity of an Act of the state legislature prescribing over-all regulation of the business as to the storage, grading, mixing, weighing, etc., of grain, and the receipts issued therefor. The Act was similar in scope to the United States Warehouse Act, the aim of which is to secure fair and uniform business practices, and to facilitate and safeguard commerce in agricultural products. This decision and the argument of plaintiffs predicated thereon might be applicable if we had under consideration Illinois state legislation relative to the warehousing of grain, which covers substantially the same field as the South Dakota and federal legislation, but they are totally inapplicable when applied to an ordinance like the one before us, which attempts to deal only with conditions in the building affecting fire and explosion hazards and which is designed, not to regulate the occupation of warehousemen as such, but the place in which the grain is stored.

This statement would appear to indicate that the Illinois courts would agree with the court below as to the invalidity of the State law involved in these cases.

The United States Warehouse as originally enacted was not, as contended by petitioners, primarily a warehouse receipts act of limited regulatory scope. It was a general regulatory act designed to correct loose and harmful practices of warehousemen that were detrimental to the interests of farmers and to the economic structure of the nation. It was intended to encourage the proper storage of agricultural products by farmers, to correct abuses in connection with the storage of agricultural products in public warehouses, and to develop a sound system of warehouse receipts that would make stored agricultural products recognized collateral for loans. In order to accomplish that result, the act provided for the issuance of Federal licenses to warehousemen who agreed to comply with the provisions of the act and with the regulations issued thereunder, and for detailed supervision of the licensees.

The purposes of the act were stated in House Report No. 60, 64th Congress, 1st Session, page 1, as follows:

> The outbreak of the European war emphasized the fact that the farm marketing machinery of this country is seriously weak, insufficient, and inadequate—a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of

> proper control and regulation of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems of the country.
>
> The inauguration under this bill of a permissive system of warehouses licensed and bonded under authority of the Federal Government * * * would go far in the direction of standardizing warehouse construction, storage conditions, insurance, accounting, financing, and the handling and marketing of farm products.

Each of these purposes contemplates more than the mere regulation of the form of warehouse receipts. If Congress had intended to provide only for that type of regulation it would in all probability have enacted legislation similar to the Uniform Warehouse Receipts Act, which had been adopted by 32 states and the District of Columbia at the time Congress had the subject under consideration.[4]

The purposes sought to be accomplished in the actual administration of the act were further described in United States Department of Agricul-

[4] 3 Uniform Laws, Annotated, vii.

ture Miscellaneous Circular No. 51, dated January 1926, entitled "The Farmer and the United States Warehouse Act," as follows:

> In enacting the law Congress had in mind accomplishing several objects. The economic loss sustained annually by the country through farmers storing their products improperly, or not at all, amounted to many millions of dollars. One of the first objects then which the law aimed to accomplish was to eliminate this waste. That meant the law must contain some provisions which would afford an incentive to the farmer to store his products. This incentive, it was hoped, would be afforded by providing a means for orderly marketing, that is, *a means which would permit the farmer to store a part of his product following harvest and not throw it all on the market at one time, thereby depressing market prices.*
>
> Of course, Congress recognized that losses had occurred and were constantly occurring in warehouses and that farmers were frequently left with a warehouse receipt but without the products represented by the receipt. Naturally, with such experiences, the farmers were reluctant to store their products in public warehouses. This condition was due entirely to dishonesty on the part of the warehousemen. ***Congress, therefore, recognized that any law it might pass must break up loose and dishonest practices in warehousing.***

> Congress also recognized that orderly marketing was impossible for many farmers unless some means could be developed to get money to the farmer until such time as his entire crop might be sold. * * * The very products which the dealers were buying from the farmers were being paid for by money obtained from bankers who took warehouse receipts on other agricultural products as security for the loans. The way to orderly marketing therefore seemed through the warehouse receipt. *At one stroke, then, Congress aimed to encourage proper storage, to correct abuses and evil practices in warehousing, to encourage orderly marketing, and to develop a form of warehouse receipt which would be acceptable to bankers generally as security for loans on agricultural products.* [Italics supplied, pp. 1–2.]
>
> * * * * *
>
> Merely licensing warehousemen and inspectors, weighers, and graders will not put life into a warehouse receipt. *There must be rigid supervision of such licensed persons to see that they comply with the law and the Secretary's regulations. Such supervision is given by a force of examiners operating under direction of the Secretary of Agriculture.* [Italics supplied, p. 3.]

It is clear from this alone that the characterization of the act as one intended primarily to establish a workable warehouse receipt system is mis-

leading, and that the assertion that the act was intended to accomplish nothing else is erroneous. It is true that the act was intended to establish a warehouse receipt system. The lack of an adequate system created the principal need for regulation of the warehousing business. But a workable warehouse receipt system is an end product that can be attained only by means of detailed regulation of the warehousing business itself, and the petitioner's characterization of the act should not be used to obscure the fact that such regulation is provided. The House Committee report that explained the purpose of the act stated the need for extensive regulation in order to support a sound warehouse receipt system in the following words:

> We are seeking in this bill to put farm products in such position that they may assert their full value and strength [as a source of credit], and this can be done only through a system which assures to the investor their *quality, quantity, and safekeeping* and at the same time affords him an investment which is readily negotiable [H. Rept. No. 60, 64th Cong., 1st. Sess., p. 2]. [Italics supplied.]

A brief analysis of the provisions of the act is sufficient to indicate that they provide a comprehensive system of regulation. The Secretary of Agriculture is authorized to issue, upon application, a license to a warehouseman engaged in

the business of storing agricultural products for interstate or foreign commerce if the warehouseman agrees to comply with the provisions of the act and with the regulations of the Secretary issued thereunder (Section 4). Such warehouseman is then authorized to represent himself to be federally licensed and bonded (Section 8). With respect to the operation of a federally licensed and bonded warehouse, the act provides for:

(1) The determination of the suitability of the warehouse for the storage of agricultural products (Section 3).

(2) The prescription of the duties of the warehouseman with respect to his care of and responsibility for stored agricultural products (Section 3).

(3) The determination of the competency of persons employed in the warehouse to inspect, sample, classify according to grade or otherwise, and weigh agricultural products (Section 11). All persons so employed must be licensed by the Secretary (Section 15).

(4) The prescription of standards for determining the quality and value of stored products (Section 19).

(5) The approval of the adequacy and amount of a bond to secured the faithful performance of the obligations of the warehouseman (Section 6).

(6) Nondiscriminatory practices by the warehouseman (Section 13).

(7) Reasonable storage rates (Section 25).

(8) Segregation of stored agricultural products (Section 16).

(9) Mingling of fungible agricultural products of the same kind and grade (Section 16).

(10) Issuance of warehouse receipts, their form, contents and cancellation (Sections 17, 18, 20 and 22).

(11) Prompt delivery of stored products (Section 21).

In addition, the Secretary of Agriculture is given authority to:

(1) Investigate warehousing practices generally (Section 3).

(2) Inspect warehouses operated by licensees or applicants for licenses (Section 3).

(3) Classify warehouses (Section 3).

(4) Examine the agricultural products stored in licensed warehouses (Section 24).

(5) Assess reasonable fees for conducting examinations and inspections and for granting licenses (Section 10).

(6) Require licensees to make reports and to make records available for inspection (Sections 23 and 27).

(7) Issue rules and regulations necessary to carry out the provisions of the act (Section 28).

Finally, the act provides sanctions in the form of:

(1) Revocation of a license for violation of the provisions of the act or regulations issued thereunder (Sections 12 and 25).

(2) Publicity for certain types of violations (Sections 24 and 26).

(3) Criminal penalties for other types of violations (Section 30).

Detailed rules and regulations have been issued by the Secretary of Agriculture to implement the regulatory system authorized by the act (7 C. F. R. 102 *et seq.*).

Petitioners and the National Association of Railroad and Utilities Commissioners refer to various provisions in the Illinois Public Utilities Act that are said to be contained in most State regulatory laws applicable to warehouses and that are said to have no counterpart in the United States Warehouse Act. The purpose of the comparison is to support the contention that the Federal act does not occupy the general field of warehouse regulation. The comparison, however, does not accomplish its purpose. Six of the provisions relate to rates, rebates, and reparations for overcharges, and the Federal act specifically occupies that field of regulation by providing for the revocation of a warehouseman's license if he charges unreasonable or exorbitant rates or violates the prohibition against discrimination (Section 25). A discussion of this point is contained in the following section of this brief (*infra*, pp. 44–56). Another provision relates to the evaluation of utility property, which presumably is undertaken for rate-making purposes. Some of the procedural subjects referred to are covered by the Fed-

eral act and some are not.[5] Without commenting upon each provision of the Illinois Public Utility Act that is cited, it is submitted that the analysis of the Federal act contained in the preceding paragraphs of this brief demonstrates the general regulatory nature of the act, and that it does not, as asserted by petitioner, omit most of the provisions ordinarily contained in a regulatory statute.

It is undisputed that prior to the 1931 amendment of the act a federally licensed warehouseman was subject to dual regulation by State and Federal governments. Both governments could occupy the same field of regulation as long as their regulations did not conflict, and in the event of a conflict the State regulation prevailed. The Federal and State governments did occupy the same field of regulation and conflicts resulted.[6] In order to remedy the situation and to strengthen the Federal act, Congress enacted the 1931 amendment to Section 29.

---

[5] The Federal and State acts both contain express provisions for investigation and hearing. The Federal act, however, does not contain some of the detailed provisions found in the State act relating to complaints and notice, attendance of witnesses and depositions, issuance of order, record, and judicial review. The regulations issued by the Secretary provide for the issuance of a complaint and notice (7 C. F. R. 102.9), for submission of evidence by affidavits, oral hearings, notice to interested persons, testimony under oath, and depositions (7 C. F. R. 102.99).

[6] S. Rept. 1775, 71st Cong., 3d Sess., p. 2.

Although the conflict between Federal and State regulation prompted enactment of the 1931 amendment, the amendment did not continue the system of dual regulation and merely reverse the relationship between Federal and State law by making the Federal act, rather than the State law, paramount in the event of conflict. Congress could have adopted that solution of the problem, but it did not do so. To the contrary, it chose to remedy the difficulty by terminating the dual system of regulation. The amendment specifically provides that the Secretary's jurisdiction under the act "shall be exclusive" with respect to a federally licensed warehouseman "so long as said license remains in effect." The intention to relieve a federally licensed warehouseman from regulation by a State, in so far as his interstate and foreign commerce activities are concerned, is clear from this language of the amendment, and is made unmistakable by the Senate Committee report. The Committee said:

> It [the amendment] does not change the permissive feature of the Federal act. No warehouseman is obliged to operate under the Federal act. The amendment merely leaves the choice to warehousemen and their patrons as to whether or not a warehouse shall be operated under the Federal act, and *if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible*

to the Federal act. [Italics supplied.] (S. Rept. 1775, 71st Cong., 3d Sess., p. 2.)

The petitioners argue[7] that the 1931 amendment to Section 29 did not terminate the dual system of regulation because the amended section still provides that the Secretary of Agriculture "is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers." From this provision the inference is drawn that Congress assumed that non-conflicting State regulation of federally licensed warehouses would continue.[8] It is submitted that the court below correctly reached a contrary conclusion when it said that it is more likely that "Congress by this language recognized the existence of state laws over all warehouses even though they were instru-

[7] Brief of the Rice petitioners in Nos. 470 and 472, pp. 37, 42. Brief of the National Association of Railroad and Utilities Commissioners in support of the petition for a writ of certiorari in No. 470, pp. 56–57.

[8] The petitioners rely particularly on the language the Court used in *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, at p. 209. In that case the Court held that a State statute requiring federally licensed customhouse brokers to secure a certificate authorizing the broker to do business within the State was not superseded by Federal regulations relating to customhouse brokers. In reaching its decision the Court emphasized the fact that a Federal regulation required a Federal licensee to secure a certificate authorizing it to do business in the State. It was in the light of these facts that the Court stated, "Where the Government has provided for collaboration the courts should not find conflict." P. 209.

mentalities of interstate commerce unless and until they had made application and obtained a license under the federal Act" (R. 97). It is important to note that Section 29 as originally enacted authorized the Secretary of Agriculture to cooperate with State officials for the purpose of securing through such cooperation the enforcement of the provisions of the Federal act, but that the amended Section 29 omits the reference to the purpose of cooperation and includes in the sentence authorizing cooperation the qualification that the jurisdiction of the Secretary shall be exclusive with respect to a federally licensed warehouseman "so long as said license remains in effect." Obviously, the purposes of the Federal act are now to be accomplished by direct regulation of federally licensed warehousemen, and the provision for cooperation with the States relates to cooperation in the regulation under State law of warehousemen that do not store agricultural products for interstate or foreign commerce or that do not elect to obtain a Federal license.[9]

[9] The petitioners point to the fact that specific references are made to State law in sections 18 and 20 of the Warehouse Act, 7 U. S. C. 260, 261. Section 18 provides that unless otherwise required by State law, the receipt issued to a depositor of other than fungible agricultural products may omit compliance with subsection (g) of section 18 relating to the grade or class of the particular products. Section 20 provides for the issuance of a substitute receipt when the original is lost provided the issuance complies with any applicable State or Federal law. The express references to State laws indicate merely that with respect to these particu-

Petitioners rely on *United States* v. *Hastings*, 296 U. S. 188, in support of their argument that the United States Warehouse Act does not cover the entire field of warehouse regulation. That decision has no direct bearing on the issues in these cases. In the *Hastings* case, the Court held that a criminal indictment brought under Section 30 of the United States Warehouse Act was insufficient because it failed to allege that the bales of cotton stolen from the federal warehouse had been stored for interstate or foreign commerce.[10] The decision dealt solely with the question of the "scope of the penal provision" in the warehouse act (p. 195). It is significant, however, that the Court referred to the 1931 amendment and pointed out that section 29, as amended, asserts the exclusive authority of the Secretary so far as it relates to the authority conferred by the United States Warehouse Act (pp. 197, 199). While the decision supports the conclusion that the authority of the Secretary is exclusive, the Court did

---

lar matters the Congress intended that State statutes shall not be superseded by Federal law. In any event, the field in which State statutes are applicable under sections 18 and 20 of the Warehouse Act is very narrow and is not involved in this action.

[10] The record shows that *all* warehouse receipts issued by the respondents during the periods covered by the affidavits in the record recited that the grain covered by the receipts was received for storage in the course of interstate or foreign commerce, and that all except a negligible percentage of the grain so stored actually moved in interstate or foreign commerce (R. 49–62).

not discuss the scope of the Secretary's authority and the decision, therefore, is not helpful on the question whether the Illinois statute regulated the same subject matter as the Federal act and is therefore superseded.

The petitioners also rely on *Townsend* v. *Yeomans,* 301 U. S. 441, as showing that the United States Warehouse Act covers a limited field of regulation. That case did not involve the United States Warehouse Act, but the Court (p. 457) referred by way of analogy to its decision in *Federal Compress Co.* v. *McLean,* 291 U. S. 17, where it held that although the Federal Government exercises "a measure of control" over federally licensed warehouses, the Federal control does not make the warehouses instrumentalities of the Federal Government exempt from State taxation. In neither the *Townsend* nor the *McLean* case did the Court consider the scope of the Warehouse Act so far as it relates to supersedure of State regulatory standards. The decision in the *McLean* case turned on the question whether a State tax on a tobacco warehouse was valid, an issue different from that involved here. See *Binderup* v. *Pathe Exchange Inc.,* 263 U. S. 291, 311.

Summarizing, it is submitted that the United States Warehouse Act was intended and is administered as a general regulatory act; that, as originally enacted, it contemplated a dual sys-

tem of regulation by Federal and State governments; that both the Federal and State systems occupied the same general field, but State regulations were made paramount in the event of conflict; that the dual system of regulation, with its resulting conflicts, detracted from the efficacy of the Federal system; and that Congress remedied the difficulty by amending the Federal act in 1931 to make the regulatory jurisdiction of the Secretary of Agriculture over federally licensed warehouses exclusive. Congress chose to terminate the dual system of regulation rather than, as contended by the petitioners, to continue it and merely make the Federal regulation supreme in the event of conflict.

III

THE UNITED STATES WAREHOUSE ACT AS AMENDED IN 1931 SUPERSEDED THE STATE LAWS INVOKED BY THE RICE COMPLAINT BECAUSE ENFORCEMENT OF THE STATE LAWS WOULD INFRINGE THE POLICY OF THE FEDERAL ACT

In the foregoing section of the brief it has been shown that Congress expressly assumed exclusive jurisdiction to regulate warehouses licensed under the United States Warehouse Act. By its terms, the act provides that the authority conferred on the Secretary is "exclusive," thus making inoperative State regulatory laws.

Even if Congress had not made this express statement of intent, we believe that the State

regulatory statute would be superseded because it relates to the specific field of regulation covered by the Federal act. Since the Federal act confers discretion on the Secretary of Agriculture within the standards provided by the act, there would be a conflict of administration even if the State act adopted the same standards. It is not necessary, therefore, to show that the particular State regulation is in direct and irreconcilable conflict with a particular provision of the Federal act. It is sufficient if the State act covers the same subject matter. It makes no difference whether the State act differs from the Federal act if the differences relate to matters that are ancillary to that field or so closely related to it as to be part of the basic subject matter covered by the Federal act."[11] If any doubt remained as to the supersedure of the State act, that doubt would be resolved because of the express declaration by Congress that in the field covered by the United States Warehouse Act the authority of the Secretary shall be "exclusive."

[11] *Charleston & Car. R. R.* v. *Varnville Co.*, 237 U. S. 597; *Missouri Pacific* v. *Porter*, 273 U. S. 341; *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Ill. Gas Co.* v. *Public Serv. Co.*, 314 U. S. 498; *Southern Ry. Co.* v. *R. R. Comm. of Ind.*, 236 U. S. 439; *Oregon-Washington Co.* v. *Washington*, 270 U. S. 87; *Napier* v. *Atlantic Coast Line*, 272 U. S. 605; *N. Y. Cent. R. R. Co.* v. *Winfield*, 244 U. S. 147; *Hines* v. *Davidowitz*, 312 U. S. 52; *Chic. R. I. & Pac. Ry. Co.* v. *Hardwick Elev. Co.*, 226 U. S. 426; *Adams Express Co.* v. *Croninger*, 226 U. S. 491.

A. The rate regulatory provisions of the State law invoked by the Rice complaint infringe the policy of the United States Warehouse Act

The Rice complaint charges that the respondents are unlawfully maintaining unjust, unreasonable, excessive, exorbitant and discriminatory rates in violation of State law (Pars. 7, 13 (g); R. 16, 19) and requests the Illinois Commerce Commission to fix just, reasonable, nondiscriminatory and nonpreferential rates for the public storage of grain (Par. 16 (f); R. 21). The rates in question are rates for the storage of grain in the course of interstate or foreign commerce (R. 49–62).

The United States Warehouse Act and the regulations issued thereunder [12] contain the following provisions with respect to rates charged by a warehouseman licensed under the Act:

(1) The warehouseman is prohibited from making any unreasonable or exorbitant charge for services rendered (7. C. F. R. 102.35).

(2) The warehouseman is required to receive agricultural products for storage without making any discrimination between persons desiring to avail themselves of his warehousing facilities (Section 13, 7 U. S. C. 254).

[12] The Secretary of Agriculture is authorized by Section 28 of the Act to make such rules and regulations as he may deem necessary for the effective execution of the provisions of the Act. The validity of the rules and regulations issued by the Secretary is not in dispute.

(3) Before obtaining a license, an applicant must file with the United States Department of Agriculture a schedule of charges to be made by him if licensed (7 C. F. R. 102.35).

(4) After he has received a license, the warehouseman may not change the schedule of rates on file with the Department of Agriculture until after he has filed with the Department a statement showing the proposed change and the reasons therefor (7 C. F. R. 102.35).

(5) A current schedule of charges must be kept posted in a conspicuous place at the principal office of the warehouseman (7 C. F. R. 102.35).

(6) Every person licensed under the act is required to furnish the Department immediately any information that comes to his attention tending to show that any provision of the Act or of the regulations issued thereunder has been violated (7 C. F. R. 102.98), and the premises, books and records of the warehouseman are subject to inspection at any time by representatives of the Secretary of Agriculture (7 C. F. R. 102.39).

(7) The Secretary of Agriculture may, after an opportunity for hearing, suspend or revoke the license of the warehouseman if he has made unreasonable or exorbitant charges or if he has discriminated between persons desiring to use his warehousing facilities (Section 25, as amended, 7 U. S. C. 246).

These provisions of the Federal act and regulations provide a complete system for regulating the rates charged by a federally licensed ware-

houseman. He is required to charge reasonable, nonexcessive and nondiscriminatory rates,[13] and a procedure is provided for enforcing that obligation. An applicant for a license is required to submit to the Secretary of Agriculture a schedule of rates proposed to be charged that he believes to be reasonable. If the Secretary concurs in the reasonableness of the schedule, and if the applicant is otherwise qualified, the Secretary will issue the license. If he determines that the proposed rates are unreasonable and the applicant declines to submit an acceptable schedule of rates, the Secretary may refuse to issue the license.[14]

After a license has been issued on the basis of the schedule of rates on file with the Secretary, the warehouseman must charge the rates contained in that schedule until it is changed in ac-

[13] The requirement in Section 13 of the act (7 U. S. C. 254) that a licensed warehouseman receive agricultural products for storage without discrimination between persons desiring to use his warehousing facilities is comprehensive in scope and precludes rate discrimination. A common method of discriminating between persons seeking to use warehousing facilities is to charge them different rates.

[14] It is the practice of the Department of Agriculture at the time application is made for a license to investigate the proposed licensee and his warehouse; in the course of that investigation the schedule of rates that he proposes to charge are examined and considered. If the Department objects to any proposed rate or rates, the matter is handled by negotiation between the representative of the Department and the prospective licensee. In a substantial number of cases warehousemen have changed their rates as a result of the negotiations prior to the time that the Federal license was issued.

cordance with the procedure prescribed in the regulations. If he wishes to change the schedule of rates he must first file with the Secretary a statement showing the proposed change and the reasons therefor. If the Secretary considers the proposed change to be reasonable, he need take no action and the warehouseman may put the change into effect. If the Secretary considers the proposed change to be unreasonable and the warehouseman refuses to acquiesce or to submit a substitute rate that is acceptable to the Secretary, the Secretary may initiate a proceeding to revoke the warehouseman's license.[15]

If a customer of a licensed warehouseman should believe that he has been charged an unreasonable, exorbitant or discriminatory rate in violation of the provisions of the act and regulations, he may submit the necessary information to the Department of Agriculture, which will determine whether it warrants the initiation of a

[15] 7 C. F. R. 102.9 provides that: "* * * Before a license is revoked for any violation of, or failure to comply with, any provision of the Act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 102.99 [Reg. 2, sec. 7]."

7 C. F. R. 102.99 provides for the submission of evidence by affidavit, oral hearings on request, notice to interested persons, testimony under oath, and depositions of witnesses.

proceeding for the suspension or revocation of the warehouseman's license.[16]

In this manner Congress has completely occupied the field of rate regulation. The method of regulation varies from the one provided by the laws of Illinois because regulation is accomplished by means of withholding, suspending or revoking a license under the United States Warehouse Act rather than by means of direct prescription of the rates to be charged. A warehouseman is entitled to receive and to do business under a Federal license as long as he maintains on file with the Secretary of Agriculture and charges rates regarded by the Secretary as reasonable. The reasonableness of the rates, however, is a matter solely for determination by the Secretary and any attempt by a State agency to prescribe the rates to be charged by a Federal licensee manifestly would be inconsistent with the system of rate regulation provided by Congress. The jurisdiction to control the reasonableness of rates that is conferred by the act upon the Secretary of Agriculture is exclusive (Section 29).

---

[16] An illustration of the method followed by the Department of Agriculture is shown by a case in 1942 involving a proposed changed by a warehouseman of rates in such a way that any person other than the original depositor who withdrew the grain would be compelled to pay a higher storage rate than the original depositor. Upon the complaint of a customer of the warehouseman, the matter was investigated, and following a statement of the objections of the Secretary the amended schedule of rates was withdrawn.

The National Association of Railroad and Utilities Commissioners asserts on page 22 of the brief filed in support of the petition for a writ of certiorari in No. 470 that the Secretary is not required either to approve or to disapprove a schedule of rates submitted by a licensee or by an applicant for a license, and that it is a well-settled rule that the mere acceptance of a schedule of rates for filing does not imply that the schedule has been approved.[17] However, a schedule of rates submitted to the Secretary of Agriculture is not merely accepted for filing. On the contrary, it is made the basis for affirmative action in the case of an initial application for a license, and it may be made the basis for affirmative action in the case of a change in rates by a licensee. An initial license is granted only after the reasonableness of the rates proposed to be charged by the applicant has been considered and a determination has been made that the rates are *prima facie* reasonable. That determination is subject to reconsideration by the Secretary, of course, upon complaint or upon the basis of facts revealed by

[17] The case of *Interstate Commerce Commission* v. *Cincinnati, etc. Ry. Co.*, 167 U. S. 479, 504, cited in support of the "well-settled rule" does not announce or refer to any such rule. It holds that the Interstate Commerce Commission was not authorized by the Act to Regulate Commerce, as it existed in 1896, to prescribe maximum, minimum or absolute rates, and that a schedule of rates filed with the Commission was not filed subject to the Commission's approval. Commission approval of the rates was not required.

subsequent reports, investigations, or hearings. Likewise, a proposed change in rates by a licensed warehouseman must be filed with the Secretary in advance of its effective date in order that the Secretary may have an opportunity to notify the warehouseman of his views if he considers the change unreasonable.[18] If a warehouseman should put into effect a change in rates regarded by the Secretary as unreasonable, his license would be subject to immediate suspension or revocation proceedings.

Petitioners also contend[19] that the prescription by the Illinois Commerce Commission of rates to be charged by federally licensed warehousemen need not necessarily conflict with the rate-making procedure contemplated by the United States Warehouse Act, and that only in the event of actual conflict would the Commission's action be superseded. The argument is that rates prescribed by the Commission must be reasonable, that rates considered reasonable by the Commission would also normally be considered reasonable by the Secretary of Agriculture, and that only in the event the Secretary should find a rate pre-

[18] It is the practice of the Secretary to examine each proposed change in rates and the reasons therefor submitted by a licensed warehouseman. In the event the Secretary objects to the proposed change, his suggestions or objections are called to the attention of the warehouseman.

[19] Brief of the National Association of Railroad and Utilities Commissioners in support of the petition for a writ of certiorari in No. 470, pp. 24–32.

scribed by the Commission to be unreasonable would the State-prescribed rate be superseded. The argument relies by way of analogy on the fact that intrastate railroad rates are generally subject to regulation by the State, but that the Interstate Commerce Commission may supersede a State regulation in a particular case if it finds that a rate prescribed by the State discriminates against interstate or foreign commerce. In that event, the Interstate Commerce Commission may prescribe a nondiscriminatory rate that will supersede the rate prescribed by the State.

The argument is not sound. The United States Warehouse Act contemplates that the Secretary of Agriculture shall consider and determine the reasonableness of all rates charged by a federally licensed warehouseman for the storage of grain received in the course of interstate or foreign commerce, and his jurisdiction to determine reasonableness is made exclusive. The Illinois Public Utilities Act contemplates that the Illinois Commerce Commission shall determine the reasonableness of those same rates. The two systems are in direct conflict. In the words of the Supreme Court of South Dakota, "The collision between these acts is head on. It is but a question of which master the * * * [warehouseman] must serve."[20]

[20] *In re Farmers Cooperation Assn.*, 8 N. W. (2d) 557 (1943).

The regulation of intrastate railroad rates is not analogous to the problem under consideration. The general regulation of such rates is at the present time left to the States, and Congress has authorized the Interstate Commerce Commission to supersede a State regulation only to the limited extent necessary to prevent an intrastate rate from discriminating against interstate or foreign commerce.[21] Congress has not purported to occupy the entire field of intrastate railroad rate-making. However, in the United States Warehouse Act, Congress has provided for Federal regulation of all rates charged by a federally-licensed warehouseman in connection with interstate or foriegn commerce activities, and State regulation of the same rates would be a duplication clearly inconsistent with the Federal policy.

B. The State statutory provisions regarding discriminatory and preferential practices invoked by the Rice complaint infringe the policy of the United States Warehouse Act

The Rice complaint charges that the respondents have engaged in, or are currently engaging in, the following discriminatory and preferential practices in violation of State law:

(1) Respondents discriminate against petitioners and other grain dealers by charging them

[21] Sec. 13 (3) and (4) of the Interstate Commerce Act, *North Carolina* v. *United States*, 325 U. S. 507.

higher rates than are charged agencies of the Federal government (Par. 8, R. 17).

(2) Respondents discriminate against petitioners and other grain dealers by mixing their high quality grain with other inferior quality grain to reduce the total of the minimum quality allowed (Par. 9 (a), R. 17).

(3) Respondents discriminate against petitioners and give preferences to other grain dealers by rebating some storage charges (Par. 9 (b), R. 17).

(4) Respondents discriminate against petitioners and other grain dealers by withholding desirable transit tonnage (Par. 9 (c), R. 17).

(5) Respondents discriminate against petitioners by providing storage in old wooden warehouses carrying exorbitant insurance premium rates, although respondents also own modern warehouses carrying reasonable insurance premium rates (Par. 9 (d), R. 17).

(6) Respondents discriminate against petitioners and give preferences to other grain dealers by unduly delaying the loading of grain after the delivery of warehouse receipts and the tender of proper storage charges (Par. 9 (e), R. 18).

That all these practices are within the sphere of regulation provided by the United States Warehouse Act may be demonstrated by brief references to sections of the act and regulations issued thereunder. Rate discriminations, rebates, transit tonnage discriminations, and discriminations with

respect to preferred storage facilities are forbidden by section 13 of the act, which requires each licensed warehouseman to receive agricultural products for storage, in so far as the capacity of his warehouse permits, "without making any discrimination between persons desiring to avail themselves of warehouse facilities." Grain is not received for storage without discrimination if it is accepted subject to discriminatory storage rates, subject to storage in inferior warehousing facilities, or subject to the furnishing of transit tonnage on a discriminatory basis.

Furthermore, with respect to the alleged rate discriminations, the record shows that the respondents have charged only those rates that are on file with the Secretary of Agriculture and that are publicly displayed as required by the act and regulations (R. 50, 52, 53, 55, 56, 59–60, 62).

With respect to the charge that grain has been improperly mixed, all fungible grain must be graded by a person licensed by the Secretary of Agriculture (Section 15); it must be graded according to official standards (Section 18); fungible grain may be mixed with other grain of the same kind and grade, but not with grain of a different grade (Section 16), unless requested by the owner (7 C. F. R. 102.50); and fungible grain must be delivered by the warehouseman in accordance with the grade and quantity named in the warehouse receipt (7 C. F. R. 102.48).

As to the charge regarding the delayed loading of grain, each warehouseman is specifically required to deliver stored products without unnecessary delay (Section 21). The Department of Agriculture has received many complaints of the violation of this requirement by Federal licensees, and it has always insisted upon and directed more prompt delivery when it found that the complaints were substantial.

All these regulatory provisions of the United States Warehouse Act are enforceable by the authority of the Secretary of Agriculture to suspend or revoke the license of a warehouseman who fails to comply (Section 25). In addition, a criminal penalty is provided for any person who fraudulently grades stored agricultural products (Section 30). It has been suggested[22] that this method of enforcement is not as effective as the method provided by State law, which permits the issuance of an order prohibiting the continuance of discriminatory and preferential practices. The adequacy of the enforcement procedure provided by the United States Warehouse Act is a matter of policy for determination by Congress, and it has no bearing on the scope of the field of regulation covered by the act.

[22] Brief of the National Association of Railroad and Utilities Commissioners in support of the petition for a writ of certiorari in No. 470, p. 35.

It has also been suggested[23] that neither the license revocation procedure of section 25 nor the penal provisions of section 30 apply to discriminatory and preferential practices with respect to grain stored in the course of local business and not stored for interstate or foreign commerce. The case of *United States* v. *Hastings*, 296 U. S. 188, cited in support of the suggestion, does not necessarily support that conclusion. In any event, the record here shows that all grain stored by the respondents was covered by warehouse receipts that recited the grain was received for storage in the course of interstate or foreign commerce (R. 49–62). At the time grain is stored in a warehouse it is intermingled with the grain of other owners, and the depositor ordinarily does not know where his grain will be shipped. Even when grain is segregated in the warehouse the depositor ordinarily does not know its ultimate destination at the time the warehouse receipt is issued. The record shows that most of the grain stored by the respondents actually moved in interstate or foreign commerce. The fact that a negligible portion of the grain did not move in interstate or foreign commerce does not detract from the fact that at the time it was stored it was held for such commerce.

[23] *Ibid.*

C. The State law relating to the licensing of warehousemen, abandonment of services, and inadequacy of services invoked by the Rice complaint infringes the policy of the United States Warehouse Act

The Rice complaint charges that the respondents, in violation of State law, have provided inadequate, improper, and inefficient warehousing services resulting in the deterioration of grain stored by them (Par. 12, R. 18); have operated without State licenses (Par. 13 (h), R. 19); and have abandoned and discontinued warehousing facilities without the approval of the Illinois Commerce Commission (Par. 13 (f), R. 19).

The adequacy of the services provided by federally licensed warehousemen is specifically subjected to regulation by the United States Warehouse Act and such regulation is made exclusive by Section 29. However, aside from the provisions of Section 29, within this clearly defined field there is a precise coincidence of Federal and State regulation, the State regulation is duplicative, and it necessarily must give way.[24] When an application is made for a license, the Secretary of Agriculture is authorized to determine whether the warehouse is suitable for the proper storage of agricultural products (Section 3), and if a license is issued, the Secretary is authorized to prescribe the duties of the warehouseman with

[24] Cf. *Southern Ry. Co.* v. *R. R. Commission of Indiana*, 236 U. S. 439.

respect to the care of and the responsibility for the agricultural products stored in the warehouse (Section 3). Each licensed warehouseman is required to make reports to the Secretary concerning the condition, contents, operation and business of his warehouse (Section 23), and the Secretary is authorized to examine agricultural products stored in the warehouse for the purpose of determining whether the warehouseman is fully performing his duties with respect thereto (Section 24). Regulations issued by the Secretary of Agriculture provide that a license will not be granted if the warehouse is not suitable for the storage of grain (7 C. F. R. 102.7); that the warehouseman must exercise the same care in regard to grain in his custody that a reasonably careful owner would exercise under the same circumstances (7 C. F. R. 102.40); and that the warehouse shall be kept clean (7 C. F. R. 102.47). The regulations also provide in detail for reconditioning grain that deteriorates through natural causes, for notifying the owner when reconditioning is not possible, and for disposal of the deteriorated grain when necessary to protect the condition of other grain stored in the warehouse (7 C. F. R. 102.53–102.55). In addition, the act requires each licensed warehouseman to provide a bond to secure the faithful performance of his obligations as a warehouseman under the act and regulations (Section 6), and any person injured by a breach of the

warehouseman's obligation may sue on the bond in his own name to recover damages for injuries sustained (Section 7).

The State requirement that a federally licensed warehouseman must also obtain a State license before he may engage in the business of storing grain for interstate or foreign commerce clearly has been superseded by the 1931 amendment of the United States Warehouse Act. A license granted by the Secretary of Agriculture under the Federal act authorizes the licensee to conduct the warehousing business in accordance with the provisions of the act. Any attempt by the State to impose additional requirements before a Federal licensee may exercise his license would be in direct derogation of the Federal act. Moreover, as has been indicated above, Section 5a (7) of the Commodity Exchange Act, 7 U. S. C. 7a (7), contains a congressional recognition of the authority of a federally licensed warehouseman to operate without a State license in the provision that receipts issued under the United States Warehouse Act must be accepted in satisfaction of futures contracts "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State."

It follows from what has been stated above that the State has no jurisdiction to control the abandonment of services by a federally licensed warehouse. So long as a warehouseman has a Federal

license he is subject to regulation by the Secretary as to the adequacy of the services he renders. Compare *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498. If by abandonment of any part of his services the warehouse is no longer suitable for the purposes for which the license was given, the warehouseman is subject to proceedings by the Secretary under the statute. If the State may not regulate the adequacy of services rendered by a warehouseman under his federal license, there is no basis for State control over the abandonment of any part of his services.

There is no limitation in the statute preventing a Federal licensee from surrendering his license at will. When he relinquishes his license, the warehouseman is subject to whatever State statutes are applicable. The fact that the warehouseman may abandon both his business and relinquish his Federal license at the same time, as suggested in the petitioner's brief, is of no significance. An examination of the provisions of the United States Warehouse Act indicates that Congress did not intend that the licensee's right to relinquish his license be restricted. Petitioner asserts that the State statute provides no protection to the petitioner's interest in the event that a warehouseman abandons his services at the same time he relinquishes his Federal license. This may be a ground for criticizing either the State or the Federal statute. It does not, however, change the fact that

so long as the warehouseman retains his Federal license he is subject to the exclusive control of the Secretary as to the adequacy of his services. It is not until he surrenders his license or it is revoked by the Secretary that he is removed from the authority of the Secretary and becomes subject to State regulation.

D. The State constitutional prohibition against a public grain warehouseman dealing in grain infringes the policy of the United States Warehouse Act

The Rice complaint charges that some of the respondents have violated Article XIII of the Illinois Constitution by dealing in grain owned and stored by them in their own warehouses. This constitutional provision has been construed by the Supreme Court of Illinois to prohibit such practice as contrary to the public policy of the State. *Hannah* v. *People*, 198 Ill. 77 (1902). The record shows that the respondents have in fact stored several million bushels of grain owned by them in their own warehouses (R. 49–62).

The pertinent provision of the United States Warehouse Act is section 18, which specifies in detail the information that must be included in each warehouse receipt issued under the act. Subsection (i) of section 18 states that "if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of

such ownership" shall be shown.[25] The purpose of this provision is to let persons who lend money and take warehouse receipts as collateral know that the property relied upon as security for the loan is in the possession of the borrower rather than a disinterested third party. The practice of a warehouseman storing his own grain is not suspect, as suggested by the petitioners. The suspicious circumstance consists only in the failure to disclose the warehouseman's interest in the grain represented by the receipt.

It is submitted that section 18 (i) evidences a Federal policy to permit a licensed warehouseman to store his own grain and to mix it with the grain of other owners if the practice is disclosed. Disclosure of the warehouseman's interest in grain covered by a warehouse receipt is the extent of the restriction Congress sought to impose. It was not the policy of Congress to prohibit the practice.

---

[25] Section 18 (i) of the United States Warehouse Act is in substantially the same form as section 2 (h) of the Uniform Warehouse Receipts Act, which has been adopted by 47 states, the District of Columbia, Puerto Rico, and the Philippine Islands. 3 Uniform Laws, Annotated, 2 (h) provides in part: "Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms * * * (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership." Section 2 (h) was adopted by the State of Illinois without change. Illinois Warehouse Receipts Act, Ill. Rev. Stats. 1945, Ch. 114, sec. 234.

Prior to the amendment of the act of 1931 the policy of Congress was made subservient to the laws and public policies of the various States. In the event of conflict the State policy prevailed. However, the 1931 amendment was intended to make Federal policy prevail. Consequently, although section 18 (i) quoted above, does not affirmatively authorize a licensed warehouseman to store his own grain, the policy with respect to such storage is clear and the enforcement of the State constitutional provision in accordance with the prayer of the Rice complaint would infringe that policy.

E. The State statutory provisions relating to contracts between affiliates or with other public utilities, and relating to the issuance of securities, as invoked by the Rice complaint, probably infringe the policy of the United States Warehouse Act

The *Rice* complaint charges (R. 19) that the respondents have violated the laws of the State of Illinois by:

> (a) Failing to secure prior approval of the Illinois Commerce Commission before entering into management, construction, engineering, supply, financial and similar contracts and arrangements between such warehousemen as public utilities and an affiliate, as required by Section 8a of the Public Utility Act.
>
> (b) Failing to secure prior approval of contracts, leases, etc., between such ware-

housemen and other public utilities, as required by Section 27 of the Public Utility Act.

(c) Failing to secure authorization of the commission before issuing securities payable at periods of more than twelve months after date, as required by Section 21 of the Public Utility Act.

The pertinent provisions of the sections of the Illinois Public Utility Act cited in the complaint are set forth or summarized in the margin.[26]

---

[26] *Section 8a, Illinois Public Utilities Act:* "(3) No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it shall first have been filed with and consented to by the commission. * * * If it be found by the commission, after investigation and a hearing, that any such contract is not in the public interest, the commission is hereby authorized to disapprove such contract. Every contract or arrangement not consented to or excepted by the commission as provided for in this section shall be void."

Section 21, Illinois Public Utilities Act: "Subject to the provisions of this Act and of the order of the commission issued as provided in this Act, a public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely: For the acquisition of property, or for the construction, extension or improvement of or addition to its facilities, or for the discharge or lawful refunding of its obligations; or for the reimbursement of moneys actually expended from income [or from certain other funds] * * * for any of the aforesaid purposes [with certain exceptions] in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of

The United States Warehouse Act contains no provisions relating expressly to the matter referred to in the Rice complaint, and the Secretary of Agriculture has not purported to exercise supervisory powers comparable to those allegedly vested in the Illinois Commerce Commission.[27] Consequently, whether the State statutory provisions in question have been superseded must depend upon whether they relate to a subject that is ancillary to the basic subject matter covered by the Federal Act or so closely related to such subject matter as to be a part of it.

The conclusion to be drawn as to this point from the record before the Court is not free from doubt. On the one hand it can be said that the

---

moneys so expended and the purposes for which such expenditures were made, and the sources of the funds in the treasury of the public utility applied to such expenditures."

Section 27 of the Illinois Public Utilities Act provides that, without the prior consent and approval of the commission, no public utility may operate its lines or plants in connection with those of another public utility, may merge or consolidate its properties with those of another public utility, may acquire the property or business of another public utility, may dispose of its own property or business, may acquire the stock, bonds or notes of another public utility, may guarantee the performance of any contract or obligation of another corporation, may use any part of its assets for any enterprise not essentially and directly connected with the business of the public utility, or may invest its funds in any other enterprise.

[27] Regulations of the Secretary provide, however, that each licensed warehouseman must maintain net assets liable for the payment of any indebtedness arising from the conduct of the warehouse equal to at least ten cents per bushel of its licensed grain storage capacity (7 C. F. R. 102.6).

Federal Act does not regulate this particular subject, on the other that this type of security and contract regulation is ancillary to regulation of rates, which is covered by the federal statute.[28]

Furthermore, state supervision of contracts and securities might impair the ability of a warehouseman to undertake improvements in facilities or services required by the Secretary of Agriculture. Thus, for example, if the Secretary determined that a warehouseman could not offer suitable warehouse service without an addition to his warehouse the warehouseman might be compelled to issue securities to get adequate capital for the required improvements. Under these circumstances State review of the security issue might prevent the warehouseman from making the additions required by the Secretary.

One of the basic purposes of State regulation of a utility's contracts with affiliates and other utilities and of a utility's issuance of securities is to prevent the creation of an onerous financial structure or an impairment of assets that would affect the ability of the utility to render adequate service to the public at reasonable rates.[29] It has been shown that, with respect to federally licensed warehousemen engaged in the storage of grain for

[28] We do not mean to suggest that a State Blue Sky Law aimed at preventing fraud in the issuance of securities and the protection of investors would be inconsistent with the United States Warehouse Act.

[29] This statement of purpose is advanced in the brief for the Rice petitioner in Nos. 470, 472 (p. 53).

interstate or foreign commerce, the Federal Government has preempted the field of regulation relating to adequacy of services and reasonableness of rates. It would be anomalous for the State to regulate securities and contracts for the purpose of touching the periphery of a field that it may not occupy directly. The fact that Congress occupied those fields of regulation without providing for the precise type of controls under consideration may be said to indicate that Congress intended to accomplish its regulatory objectives without the exercise of those controls.

Supersedure of these provisions of State law is not dependent upon a grant of authority to the Secretary of Agriculture to exercise comparable regulatory jurisdiction. In this respect the case of *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, is analogous. There the Court held that the Renovated Butter Act, which regulated the production of renovated butter by prescribing the conditions under which it may be made, by making provision for the inspection of the factory and the ingredients used for manufacture, and by authorizing the seizure of the finished product if impure, superseded a State statute authorizing the seizure of impure packing stock butter (one of the ingredients of renovated butter) in the hands of a manufacturer for renovation, notwithstanding the fact that impure packing stock butter cannot be condemned under the Federal act and the impure ingredient can be traced to the fin-

ished product only with great difficulty. The Court held that State regulation was inconsistent with the regulatory policy of the Federal act, saying (p. 169):

> Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture. To uphold the power of the State of Alabama to condemn the material in the factory, while it was under federal observation and while federal enforcement deemed it wholesome, would not only hamper the administration of the federal act but would be inconsistent with its requirements. Whether the sanction used to enforce the regulation is condemnation of the material or the product is not significant. Since there was federal regulation of the materials and composition of the manufactured article, there could not be similar state regulation of the same subject.[30]

The same rationale is applicable to the present proceeding. Although Congress has not authorized the Secretary of Agriculture to regulate the execution of contracts or the issuance of securities by a federally licensed warehouseman, the

[30] The brief of the Rice petitioners in Nos. 470, 472, implies (pp. 25–26) that the *Cloverleaf* case was overruled by *Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261 (1943). That implication is incorrect. Different issues were involved in the two cases and the Court's opinions are not inconsistent. See also *Hill* v. *Florida*, 325 U. S. 538, 542.

purpose of such regulation appears to be so closely related to the regulation of rates charged and services rendered by the warehouseman—which is a field of regulation specifically and exclusively occupied by Congress—that "Congress hardly intended the intrusion of another authority" in that general field.

CONCLUSION

We respectfully submit that the decision of the court below is correct in so far as the United States Warehouse Act is concerned.

GEORGE T. WASHINGTON,
Acting Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

ROBERT C. BARNARD,
Special Assistant to the Attorney General.

W. CARROLL HUNTER,
Solicitor.

JAMES A. DOYLE,
Associate Solicitor.

LEWIS A. SIGLER,
Assistant Associate Solicitor, Department of Agriculture.

FEBRUARY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947

p. 2

SUPREME COURT OF THE UNITED STATES

Nos. 470 AND 472.—OCTOBER TERM, 1946.

Daniel F. Rice, Joseph J. Rice, et al., etc., Petitioners, 470 *v.* Santa Fe Elevator Corporation, et al. Illinois Commerce Commission, et al., Petitioners, 472 *v.* Santa Fe Elevator Corporation, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 5, 1947.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondents in these two cases are warehousemen engaged in the business of operating public warehouses for the storage of grain in Illinois. Their warehouses are operated under licenses issued by the Secretary of Agriculture pursuant to the United States Warehouse Act, 39 Stat. 486, as amended, 7 U. S. C. § 241 *et seq.* The Rice partnership, one of the petitioners, is an owner, shipper, and dealer in grain and is a customer of respondents. The Illinois Commerce Commission, another petitioner, has certain regulatory jurisdiction, to which we will later refer, over public grain warehouses and other public utility companies.

In 1944 Rice filed a complaint with the Commission, charging respondents [1] with maintaining unjust, unreasonable, and excessive rates and charges contrary to the Illi-

[1] The Chicago Board of Trade was also joined as a defendant in the proceedings before the Illinois Commerce Commission. The issues raised concerning it are considered in the companion cases decided this day, *Rice* v. *Board of Trade*, and *Illinois Commerce Commission* v. *Board of Trade*, *post* p. —.

nois Public Utilities Act, Ill. Rev. Stats. 1945, ch. 111 2/3. It charged them with discrimination in storage rates in favor of the Federal Government and its agencies and against other customers, contrary to the Public Utilities Act and the Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, ch. 114, § 189 *et seq.* It alleged that respondents were both warehousemen and dealers in grain and by reason of those dual and conflicting positions had received undue preferences and advantages to the detriment of and in discrimination against petitioners and other customers of respondents,[2] all in violation of provisions of the Public Utilities Act, the Grain Warehouse Act, or the Illinois Constitution of 1870, Article XIII. It charged respondents with having failed to provide reasonable, safe, and adequate public grain warehouse service and facilities, with issuing securities, with abandoning service, and with entering into various contracts with their affiliates without prior approval of the Commission; with rendering storage and warehousing services without having filed and published their rates; with operating without a state license; and with mixing public grain with

[2] The preferences were alleged to have arisen from the practice of respondents in "(a) Mixing high quality public grain with inferior grain owned or acquired by the defendant warehouseman to reduce grain delivered to the point of minimum quality within the established grain trade, (b) Sacrificing part of storage charges to effect purchases and sales of grain and otherwise manipulating and rebating storage charges on grain stored in private warehouse space. (c) Furnishing transit tonnage to owners of public grain of the most undesirable type, while withholding for their own use the most desirable transit tonnage, thereby placing the owners of public grain at a distinct disadvantage in merchandising grain in storage. (d) Providing for storage of public grain in old wooden warehouses carrying exorbitant insurance premium rates, while storing the warehousemen's own grain in modern warehouses with reasonable insurance premium rates. (e) Unduly and imprudently delaying loading of grain after return of warehouse receipt issued by the particular warehouseman, the tender of proper charges and the receipt of instructions to load grain for delivery."

grains of different grades—all in violation of provisions of the Public Utilities Act or the Grain Warehouse Act. Among the remedies sought were the fixing of just, reasonable, and non-discriminatory rates, the prohibition of unlawful discriminatory practices, the establishment of reasonable, safe and adequate storage and warehousing service, and the assessment of penalties for violations of Illinois law, including the cancellation of grain warehouse licenses.

Respondents moved to dismiss on the ground that the United States Warehouse Act superseded the authority of the Commission to regulate in the manner sought by the complaint. The Commission denied the motion and set the cause for a hearing on the merits. Thereupon respondents brought these suits in the District Court to enjoin further proceedings before the Commission and to enjoin the Attorney General of Illinois from instituting any proceedings against respondents to enforce any order of the Commission in the matter. Motions of petitioners to dismiss were granted. On appeal the Circuit Court of Appeals reversed, holding that the United States Warehouse Act superseded state regulation of respondents as to the matters presented in petitioners' complaint.[3] 156 F. 2d 33. The cases are here on petitions for writs of certiorari which we granted because of the public importance of the questions presented.

The United States Warehouse Act, as originally enacted in 1916 (39 Stat. 486), made federal regulation in this field subservient to state regulation. It provided in § 29 that "nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen . . . ." And § 6 required an applicant for a federal warehouse license to provide a bond "to secure the faithful performance of

[3] Accord: *In re Farmers Coop. Ass'n*, 69 S. D. 191, 8 N. W. 2d 557.

his obligations as a warehouseman" under state as well as under federal law.

In 1931 Congress amended the Act. 46 Stat. 1463. Section 29 was amended [4] to provide that although the

[4] The Secretary of Agriculture who recommended the 1931 amendment to § 29 gave the following reasons:

"The amendment suggested relative to section 29 aims to make the Federal warehouse act independent of any State legislation on the subject. As the law now reads, it can be nullified by State legislation. There are conflicts at present between the State laws and the Federal act. For instance, under certain State laws warehousemen are permitted to ship the products from their warehouses to a terminal or other warehouse while the receipts are outstanding. The prime purpose of the Federal warehouse act is to make it possible to finance, properly, agricultural products while in storage. No banker can safely loan on a warehouse receipt representing a product to be in a certain warehouse when, as a matter of fact, it may be moved under authority of State law to some other and distant warehouse. The Federal warehouse act, as now worded, specifically prohibits removal of the product prior to the return of the receipts. This department emphatically believes that this requirement of the Federal act is sound and the banking fraternity generally shares that same feeling. It is at once apparent to you, of course, that if the Federal act may be nullified by State laws with respect to a feature as important as this that the value of Federal warehouse receipts might be destroyed. For that reason, then, we have suggested amending section 29 so as to make the Federal warehouse act independent of any State legislation on warehousing."

Hearings before Senate Committee on Agriculture and Forestry on H. R. 7, 71st Cong., 3d Sess., p. 10. And see *id.*, pp. 22–26.

Independent Gin & W. Co. v. *Dunwoody*, 40 F. 2d 1, arose under the law as originally enacted. It was a suit brought by warehousemen, who were licensed under the Federal Act, to enjoin officials of Alabama from enforcing provisions of Alabama warehouse law. These were provisions requiring payment of a graduated license or privilege tax, for the giving of a bond, for the obtaining of a license and for submission to state regulation concerning the suitability and adequacy of the warehouse structure, the character of records to be kept, the inspection of the warehouse buildings and the audit of the books. Agr. Code Ala. 1927, §§ 388–407. The Federal Act was construed not to exclude such state regulation.

Secretary of Agriculture "is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen", and their personnel, "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect." Section 6 was amended to omit the requirement that the bond be conditioned on compliance with requirements of state law.

First. The chief matters which are the basis of the complaint before the Commission are treated as follows by the Illinois law and by the Federal Act:

(1) Just and reasonable rates. The complaint charges that respondents' rates are unjust and unreasonable. Under the Illinois statute public utility rates must be just and reasonable; and the Commission after a hearing may fix rates which meet that standard. §§ 32, 36, 41, Public Utilities Act. The Secretary of Agriculture is authorized by the Federal Act to license warehousemen [5] on condition that they conform to the requirements of the Act and the rules and regulations prescribed thereunder.[6] §§ 4, 9. Every receipt of a licensed warehouse must disclose "the rate of storage charges." § 18 (e). Before a license is granted the applicant must file his proposed rates with the Secretary. Reg. 5, § 3. He must also file any proposed changes in rates before making them effective. *Id.* Rates which are "unreasonable or exorbitant" are prohibited. *Id.* And the Secretary may, after hearing, suspend or revoke the license if "unreasonable or exorbitant charges have been made for services rendered." § 25; Reg. 2, § 7.

[5] Section 2 of the Act includes in the definition of "warehouse" every building "in which any agricultural product is or may be stored for interstate or foreign commerce . . ."

[6] The regulations are contained in 7 C. F. R., Part 102.

(2) Discrimination. The complaint alleges that respondents discriminate against the public and in favor of the Federal Government and its agencies by granting the latter preferential storage rates. The power of the Illinois Commission to fix rates, to which we have referred, includes the power to eliminate discriminatory rates. And see Grain Warehouse Act § 15. The Federal Act requires the publication and disclosure of licensed warehousemen's rates, as we have seen. Section 13 of the Federal Act makes it the duty of a licensed warehouseman to receive agricultural products for storage "in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities." And by § 25 the Secretary is granted authority to suspend or revoke any license of a warehouseman "for any violation of or failure to comply with any provision of this Act. . . ."

(3) Dual position of warehousemen. The complaint charged violations of Illinois law by acts of respondents in storing and dealing in their own grain while storing grain for the public. See *Hannah* v. *People*, 198 Ill. 77, 64 N. E. 776. The Federal Act requires every receipt issued for agricultural products by a licensed warehouseman to disclose "if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership. . . ." § 18 (i). In addition, the receipts for grain must contain "in event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship. . . ." Reg. 4, § 1 (a) (3). Moreover, § 5 (a) (7) of the Commodity Exchange Act, 49 Stat. 1491, 1498, 7 U. S. C. § 7 (a) (7) provides that receipts issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract . . . without discrimination and notwithstanding that the warehouseman issuing such receipts is not also

licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law. . . ."

(4) Mixing high quality public grain with inferior grain owned by respondents, delay in loading grain. The complaint charges that these practices[7] are part of the abuses flowing from the conflicting positions of respondents as public grain warehousemen and dealers in grain. They are alleged to violate the rule of *Hannah* v. *People*, *supra*, and provisions of the Public Utilities Act which prohibit any preference or advantage to any person and which disallow any act of prejudice or disadvantage to any person. § 38. And see Grain Warehouse Act § 17. Section 13 of the Federal Act, as we have seen, provides that every licensed warehouseman "shall receive for storage" any agricultural product "without making any discrimination between persons desiring to avail themselves of warehouse facilities." Section 15 provides for the inspection and grading of fungible agricultural products by federal inspectors. Section 16 permits licensed warehousemen "if authorized by agreement or by custom" to mingle fungible products with other products "of the same kind and grade." Section 16 likewise prohibits the mixing of fungible products "of different grades."[8] Section 30 provides fine and imprisonment for any person who fraudulently classifies, grades, or weighs any agricultural product stored under the provisions of the Act. Section 21 provides that a warehouseman in absence of some lawful

[7] See note 2, *supra*.

[8] The regulations promulgated under the federal Act implement these provisions. Reg. 5, § 12 provides that licensed warehousemen shall accept grain for storage and deliver grain out of storage in accordance with the grades of such grain determined by a federal inspector. Reg. 5, § 16 provides that such warehousemen shall deliver to the lawful holder of a receipt grain of the grade and quantity named in the receipt. Reg. 5, § 18 provides that grain of different grades may not be mixed except, *inter alia*, when the identity of the grain to be stored is to be preserved.

excuse shall deliver "without unnecessary delay" the stored products on proper demand.

(5) Sacrificing or rebating storage charges, retaining desirable transit tonnage, utilizing preferred storage space. These practices, charged in the complaint,[9] are alleged to be other manifestations of the evils of a public warehouseman also being a dealer in grain. They are said to be violative of the principles announced in *Central Elevator Co.* v. *People*, 174 Ill. 203, 208–209, 51 N. E. 254, 256. And these practices are said to be acts of prejudice or disadvantage outlawed by § 38 of the Public Utilities Act which we have already mentioned. On the other hand, the Federal Act, as we have seen, requires every licensed warehouseman to "receive for storage" any agricultural product "without making any discrimination between persons desiring to avail themselves of warehouse facilities." § 13.

(6) Maintenance of unsafe and inadequate elevators; inadequate and inefficient warehouse service. The complaint alleges that as a result of these practices fire insurance premiums have become exorbitant and prohibitive; that owners of grain have suffered damages due to the deterioration of grain. The Illinois Commission is granted broad powers over the maintenance of facilities which are adequate and efficient (§§ 32, 49, Public Utilities Act) including the power to order the making of additions, extensions, repairs, improvements, or changes. *Id.*, § 50. By § 3 of the Federal Act the Secretary of Agriculture is authorized "to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product . . . ." Section 3 also grants the Secretary authority to prescribe the duties of warehousemen "with respect to their care of and responsibility for agricultural products

[9] See note 2, *supra*.

stored" in licensed warehouses.[10] No license will be granted if the warehouse is found "not suitable for the proper storage of grain." Reg. 2, § 5. Every warehouseman must exercise "such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions." Reg 5, § 8. Every warehouseman must keep "his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain." Reg. 5, § 15.

(7) Operating without a state license. The complaint charges that respondents may not lawfully operate without a license from Illinois. See Grain Warehouse Act § 3. The Federal Act gives the Secretary of Agriculture authority to issue licenses on terms and conditions specified. §§ 3, 4, 5.

(8) Abandonment of warehousing service. The complaint alleges that respondents have abandoned services without consent of the Illinois commission. Approval of the Commission to abandon or discontinue service is required § 49a, Public Utilities Act. Licenses issued under the Federal Act "shall terminate as therein [§§ 4, 9] provided, or in accordance with the terms of this Act and the regulations thereunder. . . ." § 5. By § 25 the Secretary is authorized to suspend or revoke a license for any violation of the Act or the regulations. Among the grounds for revocation specified in the regulations is ceasing to conduct the licensed warehouse. Reg. 2, § 7.

---

[10] And see § 23 requiring reports to the Secretary "concerning such warehouse and the condition, contents, operation, and business thereof" and providing that the licensee "shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder."

(9) Failure to file and publish rate schedules; rendering warehousing service without filing and publishing schedules. These matters, charged in the complaint, are regulated by §§ 33 and 35 of the Public Utilities Act. Under the Federal Act a warehouseman must file his rate schedules before a license issues; proposed changes in them must be filed before made; the current schedule of charges must be posted in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to the public. Reg. 5, § 3; Reg. 2, § 6.

As we have seen, Congress in 1931 made the "power, jurisdiction, and authority" of the Secretary of Agriculture conferred by the Act "exclusive with respect to all persons securing a license" under the Act, so long as the license remains in effect. It is argued by respondents that § 29 should be construed to mean that the subjects which the Secretary's authority touches may not be regulated in any way by any state agency, though the scope of federal regulation is not as broad as the regulatory scheme of the State and even though there is or may be no necessary conflict between what the state agency and the federal agency do. On the other hand, petitioners argue that since the area taken over by the Federal Government is limited, the rest may be occupied by the States; that state regulation should not give way unless there is a precise coincidence of regulation or an irreconcilable conflict between the two.

It is clear that since warehouses engaged in the storage of grain for interstate or foreign commerce are in the federal domain, *United States* v. *Hastings*, 296 U. S. 188, Congress may, if it chooses, take unto itself all regulatory authority over them (see *New York Central R. Co.* v. *New York & P. Co.*, 271 U. S. 124), share the task with the States, or adopt as federal policy the state scheme of regulation. See *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408, 430–436. The question in each case is what the purpose of Congress was.

Congress legislated here in a field which the States have traditionally occupied. See *Munn* v. *Illinois*, 94 U. S. 113; *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 148–149. So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 611; *Allen-Bradley Local* v. *Wisconsin Employment Board*, 315 U. S. 740, 749. Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co.* v. *Public Service Comm.*, 250 U. S. 566, 569; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Hines* v. *Davidowitz*, 312 U. S. 52. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co.* v. *Railroad Commission*, 236 U. S. 439; *Charleston & W. C. R. Co.* v. *Varnville Co.*, 237 U. S. 597; *New York Central R. Co.* v. *Winfield*, 244 U. S. 147; *Napier* v. *Atlantic Coast Line R. Co.*, *supra*. Or the state policy may produce a result inconsistent with the objective of the federal statute. *Hill* v. *Florida*, 325 U. S. 538. It is often a perplexing question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide. *Townsend* v. *Yeomans*, 301 U. S. 441; *Kelly* v. *Washington*, 302 U. S. 1; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177; *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202.

A forceful argument is made here for the view that the Illinois regulatory scheme should be allowed to supple-

ment the Federal Act and that the Illinois Commission should not be prevented from acting on any of the matters covered by Rice's complaint, unless what the Commission does runs counter in fact to the federal policy. That is to say, the actual operation of the state system may be harmonious with the "measure of control" over warehousemen which the Federal Act imposes. *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 23. That, it is said, can only be determined after the Illinois Commission has acted.

That argument is illustrated in several ways. The Illinois Commission may fix rates; the Secretary of Agriculture cannot. He may, to be sure, suspend or revoke licenses if unreasonable or exorbitant charges are made. If the Commission fixes unreasonable or exorbitant rates, there will be a conflict with the Federal Act and the state rate order must fall. But until it is known what the Commission will do, no conflict with the Federal Act can be shown. If indeed it reduces rates, as may be presumed, no conflict with the Federal Act will likely exist. Another illustration concerns the dual position of the warehousemen. It is pointed out that all the Federal Act requires is disclosure; that the more basic state policy of uprooting the practice of public warehousemen storing and dealing in their own grain is not inconsistent with the federal policy of disclosure. Another illustration relates to the preferential and discriminatory practices in connection with the rebate of storage charges, retention of desirable transit tonnage, and the utilization of preferred storage space. All the Federal Act requires is that warehousemen receive products for storage without making discriminations between persons. What the Illinois Commission promulgates or requires, if the proceedings before it are allowed to go ahead, might indeed strengthen and bolster the federal regulatory scheme and in no way dilute, impair or oppose it. Such reasoning could be applied to

each of the nine charges which we have summarized, even including, perhaps, the requirements for a state license and the filing and publishing of rate schedules. See *Union Brokerage Co.* v. *Jensen, supra.*

At first blush that construction of the Federal Act has great plausibility. It preserves intact the federal system of warehouse regulation, leaves the State free to protect local interests, and strikes down state power only in case what the State does in fact dilutes or diminishes the federal program.

But the special and peculiar history of the Warehouse Act indicates to us that such a construction would thwart the federal policy which Congress adopted when it amended the Act in 1931. Prior to that time, as we have pointed out, the Federal Act by reason of its express terms had been subservient to state laws relating to warehouses and warehousemen. Congress in 1931 found that condition unfavorable and undertook to change it. If Congress had done no more than to eliminate from § 29 the language which resulted in the Act's subservience, there would be a strong case for holding that state regulatory systems were not to be affected unless they collided with the Act. That construction would receive reinforcement from the provision in § 29 that the Secretary "is authorized to cooperate with State officials charged with the enforcement of State laws" relating to warehouses and warehousemen. Cf. *Union Brokerage Co.* v. *Jensen, supra,* p. 209. But Congress did not choose that simple expedient. It went further and added to § 29 the mandatory words "the power, jurisdiction, and authority" of the Secretary conferred under the Act "shall be exclusive with respect to all persons" licensed under the Act. And the original provisions of § 6 requiring a bond from licensees securing the faithful performance of their obligations as warehousemen under state law were deleted.

These actions were explained in the Committee Reports.

The previous subservience of the Act to state law was said to have militated "against the full value of Federal Warehouse receipts for collateral purposes".[11] S. Rep. No. 1775, 71st Cong., 3d Sess., p. 2. The amendment to § 6 followed "naturally" the revision of § 29. *Id.* The amendment to § 29 was designed to make "the Federal act independent of State laws" and to "place the Federal act on its own bottom." *Id.* While a warehouseman need not operate under the Act, if he chose to be licensed under it, he would then "be authorized to operate without regard to State acts and be solely responsible to the Federal act." *Id.* Warehousemen, having made their choice to operate under state or federal law, should "then be permitted to operate without interference on the part of any agency." *Id.*, pp. 2–3. Or, as stated by the House Committee, the purpose of the amendment to § 29 was to make the Act "independent of any State legislation on the subject." H. R. Rep. No. 2314, 70th Cong., 2d Sess., p. 4.

That is strong language. It makes unambiguous what was meant by the deletion from § 6 of any requirement

---

[11] The Senate Report also stated, p. 2:

"Bankers have repeatedly pointed out that this section of the warehouse act is its weakest feature. This amendment will clarify and remove many uncertainties from the credit man's viewpoint. As the law now reads, for fear the Federal act may be negatived by State legislation or regulation, a banker is obliged to follow closely the laws of the 48 different States, the regulations thereunder, and the administrative rulings thereunder. This is an impossible task. The suggested amendment will place the Federal act independent of State acts and should enhance the value of receipts for collateral purposes."

And see H. R. Rep. No. 4, 71st Cong., 1st Sess. As stated in note 4, *supra*, the amendment was recommended by the Secretary of Agriculture "so as to make the Federal warehouse act independent of any State legislation on warehousing."

that federal licensees comply with state laws regulating warehousemen. It makes clear the significance to be attached to the special wording of § 29. The amendments to § 6 and § 29, read in light of the Committee Reports, say to us in plain terms that a licensee under the federal Act can do business "without regard to State acts"; that the matters regulated by the Federal Act cannot be regulated by the States; that on those matters a federal licensee (so far as his interstate or foreign commerce activities are concerned) is subject to regulation by one agency and by one agency alone.[12] That is to say, Congress did more than make the Federal Act paramount over state law in the event of conflict. It remedied the difficulties which had been encountered in the Act's administration by terminating the dual system of regulation. Cf. *First Iowa Hydro-Electric Coop.* v. *Federal Power Commission*, 328 U. S. 152. As stated by the Supreme Court of South Dakota, warehousemen electing to come under the Federal Act need serve but one master, and that one the federal agency. *In re Farmers Cooperative Ass'n*, 69 S. D. p. 202. The cooperation which the Secretary was authorized to undertake with state officials was cooperation in harmonizing the exclusively federal and the exclusively state systems of regulation.

In this view of the Act Congress formulated a policy on numerous phases of the warehouse business.[13] The policy

[12] That is, of course, subject to those express exceptions in the Warehouse Act which subject phases of the business to state law. See *e. g.*, §§ 18 and 20.

[13] The basic program reflected in the Act was described in H. R. Rep. No. 60, 64th Cong., 1st Sess., p. 1, as follows:

"The outbreak of the European war emphasized the fact that the farm marketing machinery of this country is seriously weak, insufficient, and inadequate—a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of proper control and regulation

on rates was not the fixing of them but control over them through issuance, suspension, or revocation of licenses. Dual or conflicting positions of warehousemen were regulated by disclosure, by general prohibitions against discrimination between customers, by control over the license. Unsafe and inadequate warehouses were protected by the power of the Secretary to determine whether the warehouses of applicants or licensees were suitable. Mixing of grain was authorized under specified conditions and prohibited under others. On each of the nine matters charged in the complaint and listed above Congress legislated. And as we read the Act, Congress in effect said that the policy which it adopted in each of the nine was exclusive of all others; and that if a licensed warehouseman complied with each requirement, he did all that he need do. He could not be required by a State to do more or additional things or conform to added regulations, even though they in no way conflicted with what was demanded of him under the Federal Act.. We recently noted that Congress can act so unequivocally as to make clear that it intends no regulation except its own. *Bethlehem Steel Corp* v. *New York State Labor Relations Board*, 330 U. S. —.

---

of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems of the country.

"The inauguration under this bill of a permissive system of warehouses licensed and bonded under authority of the Federal Government for the storage of staple and nonperishable agricultural products upon which uniform receipts may be issued, the weights and grades of the products specified therein having been previously determined by licensed weighers and graders in accordance with Government standards, would go far in the direction of standardizing warehouse construction, storage conditions, insurance, accounting, financing, and the handling and marketing of farm products."

In these fields Congress has done just that by the 1931 amendments.

Thus, by eliminating dual regulation and substituting regulation by one agency Congress sought to achieve "fair and uniform business practices" which, as noted in *Federal Compress Co.* v. *McLean, supra,* p. 23, was the purpose of the amended Act.

The test, therefore, is whether the matter on which the State asserts the right to act is in any way regulated by the federal Act. If it is, the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the State. By that test each of the nine matters we have listed is beyond the reach of the Illinois Commission since on each one Congress has declared its policy in the Warehouse Act. The provisions of Illinois law on those subjects must therefore give way by virtue of the Supremacy Clause. U. S. Const., Art. VI, Cl. 2.

Second. There were matters, other than those we have mentioned, which were charged in the complaint before the Commission.

(1) Failure to secure prior approval of the Illinois Commission for management, construction, engineering, supply, financial and other contracts between respondents and affiliates. Such approval is said to be required by § 8 (a) (3) of the Public Utilities Act.

(2) Failure to secure prior approval of contracts and leases between respondents and other public utilities. Such approval is said to be required by § 27 of the Public Utilities Act.

(3) Failure to secure approval of issuance of securities payable at periods of more than twelve months after date. Such approval is said to be required by § 21 of the Public Utilities Act.

These regulatory measures, it is said, are designed to prevent unwarranted drains on utility funds or the creation of unsound financial structures which would affect

the ability of warehousemen to render adequate service at reasonable rates.

The United States Warehouse Act contains no provisions relating expressly to these three matters. And we are told that the Secretary of Agriculture has made no attempt to exercise any jurisdiction over them. But possibilities of conflict and repugnancy are conjured up. It is stated, for example, that the Secretary might determine that a warehouseman could not offer suitable warehouse service without an addition to his warehouse, that the financing of an addition might require the warehouseman to issue securities, that state disapproval of the issue might prevent the licensee from making the required additions. But it will be time to consider such asserted conflicts between the State and Federal Acts when and if they arise. Any such objections are at this stage premature. Congress has not foreclosed state action by adopting a policy of its own on these matters. Into these fields it has not moved. By nothing that it has done has it preempted those areas. And see *Federal Compress Co.* v. *McLean, supra*, p. 23. In more ambiguous situations than this we have refused to hold that state regulation was superseded by a federal law. *Penn Dairies, Inc.* v. *Milk Control Commission*, 318 U. S. 261.

We accordingly affirm in part and reverse in part the judgment of the Circuit Court of Appeals and remand the cause to the District Court for proceedings in conformity with this opinion.

So ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 470 AND 472.—OCTOBER TERM, 1946.

Daniel F. Rice, Joseph J. Rice, et al., etc., Petitioners, 470 v. Santa Fe Elevator Corporation, et al. Illinois Commerce Commission, et al., Petitioners, 472 v. Santa Fe Elevator Corporation, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 5, 1947.]

MR. JUSTICE FRANKFURTER, with whom MR. JUSTICE RUTLEDGE concurs, dissenting.

More than seventy years ago this Court upheld the regulation of grain warehousing rates by Illinois and did so despite the relation of the great grain elevators to interstate commerce. *Munn* v. *Illinois*, 94 U. S. 113; and see *Budd* v. *New York*, 143 U. S. 517. State regulation of grain elevators had become so much part of our economic and political fabric, and so important was it deemed that the State laws remain in full force, that when Congress, in 1916, passed the first Warehouse Act (Part C of the Act of August 11, 1916, 39 Stat. 446, 486), it made that Act subordinate to the requirements of State laws. The Court now holds that by the 1931 Amendment to that Act, 46 Stat. 1463, Congress not only made the federal legislation independent of State law to the full scope of federal regulation, but also nullified the extensive network of State laws regulating warehouses, even though such laws, in their actual operation, in nowise conflict with the operation of the federal law. The Court thereby up-

roots a vast body of State enactments which in themselves do not collide with the licensing powers of the Secretary of Agriculture. It does so on the ground that Congress, by the 1931 Amendment, provided that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect."

The decision of the case turns on the "power, jurisdiction, and authority" that Congress has deposited with the Secretary of Agriculture to the exclusion of action by a State. I could understand, though that is not my view, a holding that once a warehouseman chooses to obtain a federal license, he is quit of amenability to State law relating to the business of warehousing as such. On the other hand, the Amendment of 1931 may be read, without violence to its language, as designed not to displace all State regulation of warehousing, but merely to prevent conflict or even concurrence as to the very matters with which the Secretary of Agriculture can deal. This would leave State law to operate where it could without impinging on the limited regulatory functions assumed by the Federal Government. Such is my view. The Court's conclusion is a kind of admixture of these two views. Today's decision, apparently, does not altogether free federally licensed warehouses from State warehouse regulation, nor yet subject them to State laws, even though these State laws may harmoniously function without impinging on the licensing powers of the Secretary. To my way of thinking, the justification for conceding an undefined area to the States equally justifies leaving to the States all that is not irreconcilable with the full exercise of the licensing authority given to the Secretary of Agriculture.

The facts of the case are not in dispute. Rice, an owner and shipper of grain, filed with the Illinois Commerce

Commission a complaint charging respondent warehouse owners with violations of the Illinois Public Utility Act (Ill. Rev. Stats. 1945, c. 111–2/3); the Illinois Grain Warehouse Act (Ill. Rev. Stats. 1945, c. 114 §§ 293–326 (a)), and Art. XIII of the Illinois Constitution. The violations charged include operation without a State license, exaction of unreasonable rates, failure to publish rates, failure to provide appropriate facilities, improper mixing of grades, discrimination in rates, and conflict of interests as grain-dealer and warehouseman. The respondents moved to dismiss the complaint on the ground that federal license placed them under the exclusive jurisdiction of the United States Warehouse Act, and the State's authority was entirely superseded. Upon denial of this motion by the Illinois Commerce Commission, respondents applied to the United States District Court for an injunction against further State proceedings. What is before us is the ruling of the Circuit Court of Appeals that the District Court had erred in not granting the injunction.

This Court now orders the proceedings before the Illinois Commerce Commission to be enjoined, without knowledge on our part what it is that Illinois would exact of respondents. It has not yet been decided by the authoritative voice of Illinois law, the Supreme Court of Illinois, which of her regulatory requirements would survive respect by that Court for the controlling federal Act. This Court has heretofore acted on the wise rule that it will not "assume in advance that a State will so construe its law as to bring it into conflict with the federal Constitution or an Act of Congress." *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 746. The suit in the District Court was, in any event, premature. It should, on familiar principles, be ordered held in the District Court until the claim of Illinois may be authoritatively ascertained in the State courts, thereby perhaps avoiding a claim of conflict

between State and federal legislation. Compare the series of cases from *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, to *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101.

On the merits of the controversy our problem is to determine what freedom to regulate its grain warehouses has been left to Illinois, after Congress exercised its constitutional power over such warehouses by adopting a licensing system to be administered by the Secretary of Agriculture under closely defined authority. Underlying the problem is the important fact that we are concerned with an economic enterprise which, while it has important radiations beyond State bounds, does not thereby lose special relations to the State in which it is conducted. And so we have once more the duty of judicially adjusting the interests of both the Nation and the State, where Congress has not clearly asserted its power of preemption so as to leave no doubt that the seperate interests of the States are left wholly to national protection.

The general considerations to be taken into account in striking a balance, and not to be acknowledged merely platonically, have been indicated in my opinion in *Bethlehem Steel Corporation* v. *New York State Labor Relations Board*, Nos. 55 and 76, this Term, 330 U. S. —. Suffice it to say that due regard for our federalism, in its practical operation, favors survival of the reserved authority of a State over matters that are the intimate concern of the State unless Congress has clearly swept the boards of all State authority, or the State's claim is in unmistakable conflict with what Congress has ordered.

Assuming that the undefined scope of Illinois law covers all the relief sought before the Illinois Commission, it is not suggested that there is actual conflict between the limited federal control through the licensing device and the policy of Illinois. Indeed, it seems to be admitted that the enforcement of the State Act might

well effectuate, at least in some aspects, the policy of the federal statute. Moreover, despite a statement in the House Report that the purpose of the 1931 Amendment was to make the Act "independent of any State legislation on the subject" (H. Rep. No. 2314, 70th Cong., 2d Sess., p. 4), the Court does not find that in making "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture . . . exclusive with respect to all persons securing a license" Congress insulated such licensed warehousemen from further regulation by a State. What the Court holds is that if Congress has touched a subject matter it becomes untouchable by the State, though there is neither paper nor operating conflict between federal and State spheres of authority. Thus, while Congress has not given to the Secretary of Agriculture rate-fixing power, Congress, it is said, has inferentially deprived Illinois of the power she has exercised for seventy years to fix grain warehouse rates.

I cannot agree. As to rates, for example, Congress has merely given the Secretary power to revoke a license if its holder charges "unreasonable or exorbitant" rates. The practical assumption, I submit, is not that Congress has put an end to the tried machinery for rate-fixing by the States without putting another in its place. It is rather that it would permit its licensing authority to avail itself of the facilities of the established rate-fixing agencies of the States and cooperate with them in ascertaining whether Illinois licensees *are* charging "unreasonable and exorbitant" rates. Such would be the practicalities of government where both State and Nation have converging yet separate interests, and such authorized collaboration between national and State governments should be the assumption in construing the Act unless Congress has left no doubt that it was so bent on avoidance of all possible conflict that it left no room for concert. Indeed, the very section which confers "exclusive" authority upon the Sec-

retary of Agriculture authorizes him "to cooperate with State officials charged with the enforcement of State laws relating to warehouses . . . ." 46 Stat. 1465.

By the United States Warehouse Act Congress did not undertake a general, affirmative regulation of warehouses, even remotely comparable to its regulation of other public utilities. The Act was initiated as warehouse receipts legislation, written with the Uniform Warehouse Receipts Act in mind. Neither the language nor the history of the 1931 Amendment marks a departure from the basic design and policy of the legislation. Congress did not see fit to establish a compulsory, uniform, nation-wide system for the regulation of grain warehouses, essential links though they be in the chain of interstate commerce. Nor did Congress authorize the Secretary of Agriculture to formulate and enforce such a system. Even in its limited aspect, the Act does not apply to all warehouses affecting interstate commerce. Indeed, Congress exercised no compulsion over any warehouse. Congress merely offered to those who desired it the privilege of being a federal licensee. Anyone who wished might continue to operate as a warehouseman without a federal license. As to these there is no question but that State law controls. And even those who obtain a federal license cannot be compelled to perform any positive duties. Except for certain penalties for fraud, the only sanction for disobedience of the few duties imposed is loss of the license.

Congress was content to allow two warehousemen in similar circumstances to operate under different rules if one chose to seek a federal license and the other did not. It offered perquisites incident to such a license to a warehouseman who wanted them. Such a scheme does not persuasively indicate a purpose to free such a federal licensee from regulations to which others are subject and which are not in practical conflict with the requirements of the federal law. For instance, has Congress really ex-

pressed with reasonable clarity its purpose to forbid to the States the fixing of warehouse rates and thus deprive the States of a long-standing regulatory power which the United States chose not to assume? Is it not more consistent with a proper regard for the interplay of State and national interests to assume that Congress was imposing a minimum of regulation for those who accepted federal licenses rather than to assume that by inferential sterilization of State laws Congress meant to make its optional and restricted requirements the maximum? The "power, jurisdiction, and authority" of the Secretary of Agriculture which after 1931 was to be "exclusive" are given full and fair scope if made to refer only to powers that the Secretary can effectively exercise. There is exclusion of State power as to what the Act, substantively speaking, includes, but not exclusion of a vast potential field of warehouse regulation, not within the active range of federal administration, simply because Congress dealt with a small part of it, and that only conditionally.

Nor is there anything in the history of the federal Act which requires such destructive consequences to a long-standing body of State enactments. When the 1916 Act was passed, Congress emphasized the need for State regulation by subordinating federal action to such regulation. By 1931 forty States had laws regulating warehouses, laws which at least in some aspect did not conflict with the powers vested in the Secretary of Agriculture. An impressively large number of States fixed warehouse rates. The Court now finds in the legislative history of the 1931 Amendment a purpose to wipe out all these regulations as to the holders of federal licenses.

That Amendment eliminated the subservience of the federal Act to the laws of the States, for such subservience really nullified the practical purposes at which Congress aimed in 1916 by a voluntary federal licensing system. The purpose was to make "the Federal Act independent

of State laws," and to "place the Federal Act on its own bottom." While such language in a Committee Report, treated merely as words, might be interpreted as an implicit, roughshod decimation of State authority over any aspect of warehousing which the federal licensing system touched, howsoever meagerly and indirectly, it is more consonant with a due regard for federal-State relations to find that the dominating object of the legislation controls what was meant by "independent of State laws." For the dominant object was removal of those matters which were entrusted to the Secretary of Agriculture from subordination to State action. By saving the authority which it had given to the Secretary of Agriculture from being rendered futile by State laws, Congress ought not to be held to have nullified State laws whose continuing force would not hamper the Secretary of Agriculture in exercising the powers that Congress gave him. Evidence is lacking that Congress felt that the correction of the inadequacy which had revealed itself regarding the 1916 Act required withdrawal of federal license holders from the requirements of non-conflicting State regulation. So long as full scope can be given to the amendatory legislation without undermining non-conflicting State laws, nothing but the clearest expression should persuade us that the federal Act wiped out State fixation of rates and other State requirements deeply rooted in their laws. When neither the mischief at which the 1931 Amendment was directed, nor the policy, terms and structure of warehousing legislation by Congress in its entirety necessitate it, disregard of the delicate balance of federal-State relations ought not to be attributed to Congress.

If so fundamental a change were designed, it would normally be reflected in the financial provisions made by Congress, and in the reports on the administration of the Act. The appropriations for administering the United States Warehouse Act show no substantial increase as a

consequence of the 1931 Amendment. For the years preceding and those immediately following the Amendment, the appropriations were:

1929 (45 Stat. 539, 563)	$240,320
1930 (45 Stat. 1189, 1214)	256,000
1931 (46 Stat. 392, 419)	241,000
1932 (46 Stat. 1242, 1270)	312,200
1933 (47 Stat. 609, 638)	312,020
1934 (47 Stat. 1432, 1460)	296,220
1935 (48 Stat. 467, 494)	271,383*

Moreover, those charged with the enforcement of the Act seem to have been unmindful of the far-reaching consequences now imputed to it. The reports of the Secretary of Agriculture, of the Chief of the Bureau of Agricultural Economics, and of the Chief of Agricultural Marketing Service, for the years after 1931, disclose administrative attitudes and practices no different from those of preceding years. No mention is made of the State laws which, the Court now holds, were superseded though not conflicting with federal administration. In citing the advantages incident to a federal license, no mention appears of so important an item as relief from existing State regulations.

The history of the federal act shows that at no time has Congress deemed it desirable to introduce compulsory uniformity of warehouse regulation. By freeing federal licensees from overriding State regulation Congress was not by indirection seeking to create such a uniform system. But the effect of the interpretation now given to the 1931 Amendment is the establishment of uniformity of non-regulation, in that it introduces *laissez faire* outside the very narrow scope of the Secretary's powers. It is easy to

*The more substantial increases in appropriation after 1935 seem to be due to an increase in the volume of licensing, not to an extension of the fields of supervision.

exaggerate the danger of undesirable consequences flowing from a rejected construction. But surely one does not draw on idle fears in suggesting that as a result of today's decision the gates of escape from deeply rooted State requirements will be open, although Congress itself has not authorized federal authority to take over the regulation of such activities and though their State enforcement does not at all conflict with, but rather promotes, the limited oversight of warehouses thus far assumed by the Federal Government. The Court displaces settled and fruitful State authority though it cannot replace it with federal authority.